

**BEFORE THE
NATIONAL LABOR RELATIONS BOARD**

In the Matter of:

**GARDA WORLD SECURITY CORPORATION
d/b/a GARDA CL ATLANTIC, INC.,**

Employer,

and

**INTERNATIONAL UNION, SECURITY,
POLICE, AND FIRE PROFESSIONALS
OF AMERICA (SPFPA),**

Petitioner.

Case No. **10-RC-15788**

The above-entitled matter came on for hearing pursuant to notice, before **NEALE K. SUTCLIFF**, Hearing Officer, at **National Labor Relations Board, Region 10, Regional Office, 233 Peachtree Street, N.E., Harris Tower, Suite 1000, Atlanta, Georgia, on Tuesday, September 28, 2010, at 10:00 a.m.**

A P P E A R A N C E S

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On Behalf of the Employer:

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1		<u>I N D E X</u>				
2						VOIR
3	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>DIRE</u>
4						
5	Michael Carrouth	11	47	53	56	--
6						
7	Earl McConnell	58	70	79	81	--
8						
9	Frederick Greaves	82	92	--	--	--
10						
11	Charetta Robinson	100	110	125	127	--
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13						
14	Thometra Robinson-Marks	136	149	158	162	--
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1		<u>E X H I B I T S</u>	
2	<u>EXHIBIT</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
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P R O C E E D I N G S

(Time Noted: 10:00 a.m.)

HEARING OFFICER SUTCLIFF: On the record.

The hearing will be in order. This is a hearing before the National Labor Relations Board in the matter of Garda World Security Corporation d/b/a Garda CL Atlantic, Inc., case number 10-RC-15788, pursuant to the Order of the Regional Director dated August 9th.

The Hearing Officer conducting this hearing is Neale K. Sutcliff.

The Official Reporter makes the only official transcript in these proceedings, and all citations and arguments must refer to the official record. In the event that any of the parties wishes to make off-the-record remarks, requests to make such remarks should be directed to the Hearing Officer and not to the official Reporter.

Statements of reasons in support of motions and objections should be specific and concise. Exceptions automatically follow all adverse rulings. Objections and exceptions may, on appropriate request, be permitted to an entire line of questioning.

It appears from the Regional Director's Order dated August 9, 2010, that this hearing is held for the limited purpose of receiving evidence relative to three objections filed by the Employer, the first of which asserts the Board

1 Agent who conducted the election closed the polls early, the
2 second of which asserts that at least three employees were
3 denied the opportunity to vote, and the third of which
4 asserts that the Board Agent failed to following Case
5 Handling Manual provisions concerning the proper conducting
6 of an election, causing employees to possibly be
7 disenfranchised from voting in the election.

8 In due course, the Hearing Officer will prepare and file
9 with the Board a report and recommendations in this
10 proceeding and will cause a copy thereof to be served on each
11 of the parties. The procedure to be followed from that point
12 forward is set forth in Section 102.69 of the Rules and
13 Regulations.

14 Will counsel and other representatives for the parties
15 please state their appearances for the record.

16 MR. MITCHELL: Stephen Mitchell, for the Employer.

17 HEARING OFFICER SUTCLIFF: Address.

18 MR. MITCHELL: Suite 1400, 1901 Main Street, Columbia,
19 South Carolina 29201.

20 HEARING OFFICER SUTCLIFF: For the Union?

21 MR. BROOKS: Scott A. Brooks, Gregory, Moore, Jeakle and
22 Brooks, 65 Cadillac Square, Suite 3727, Detroit, Michigan
23 48226.

24 HEARING OFFICER SUTCLIFF: Thank you. Are there any
25 other appearances?

1 MS. CLINE: Sally Cline for the Regional Director, 233
2 Peachtree Street, Northeast, Suite 1000, Atlanta, Georgia
3 30303.

4 HEARING OFFICER SUTCLIFF: Thank you. Are there any
5 other appearances?

6 **(No response.)**

7 HEARING OFFICER SUTCLIFF: Let the record show no
8 response.

9 At this time I would like to get the parties' positions
10 on each of the objections, and we'll start with the Employer,
11 Mr. Mitchell. As we've noted, there are three of them.
12 Please state your position with regard to each of the
13 objections.

14 MR. MITCHELL: Our position is that the standards set by
15 the Board in Wolverine Dispatch states that the Board will
16 set aside an election where a number of employees were
17 possibly disenfranchised due to polls being closed when
18 scheduled to be open is sufficient to affect the outcome of
19 the election. We're prepared to present evidence today that
20 the Board Agent did close the polls early during the voting
21 period, and as a result, potential voters were possibly
22 disenfranchised.

23 The evidence will show that the Board Agent's watch was
24 set 5 minutes faster than the appropriate time. The company
25 informed the Board Agent of this issue, and she chose to

1 ignore it. In addition, the Board Agent closed the polls
2 early according to her fast watch. People were turned away
3 from the voting area, and we believe that it is possible that
4 the Board Agent's actions resulted in additional voters being
5 disenfranchised.

6 The evidence will show that there is no question that
7 the number of potentially disenfranchised voters could have
8 affected the outcome of the election as the evidence will
9 show that 20 employees did not vote.

10 HEARING OFFICER SUTCLIFF: Okay. Mr. Brooks.

11 MR. BROOKS: The Case Handling Manual at 11320 states
12 that the Board Agent starts the official timepiece of the
13 election. She did so, and the election was conducted in
14 accordance with that timepiece. The election was not closed
15 early, either according to that timepiece or otherwise. No
16 employees were disenfranchised. There were three voters who
17 appeared late to vote at the first session. The evidence
18 will show that they were able to return in the afternoon --
19 the Case Handling Manual prevents a challenge regarding the
20 afternoon session involving the -- the evidence will show
21 that all three did vote in the afternoon session. There was
22 no apparent foul of the Case Handling Manual. No one was
23 denied entry. The polls did not close early. The objections
24 should be dismissed and the Board should certify the results
25 of the election.

1 HEARING OFFICER SUTCLIFF: Thank you. I now propose to
2 receive the formal papers. They have been marked for
3 identification as Board's Exhibit 1(a) through 1(g), Exhibit
4 1(g) being an index and description of the entire exhibit.
5 This exhibit has been shown to all parties.

6 **(Board's Exhibit 1(a) through 1(g) marked for**
7 **identification.)**

8 HEARING OFFICER SUTCLIFF: Are there any objections?

9 MR. MITCHELL: None.

10 HEARING OFFICER SUTCLIFF: The Hearing Officer hears no
11 objections. So the exhibits, formal papers, are received
12 into the record.

13 **(Board's Exhibit 1(a) through 1(g) received into evidence.)**

14 HEARING OFFICER SUTCLIFF: Are there any motions at this
15 time?

16 MR. BROOKS: Move to sequester.

17 HEARING OFFICER SUTCLIFF: Okay. I'm granting the
18 motion to sequester the witnesses. This means that all
19 persons who are going to testify in this proceeding, with
20 specific exceptions, may only be present in the hearing room
21 when they are giving testimony. Each party may select one
22 person to remain in the room and assist in the presentation
23 of its case. They may remain in the hearing room even if
24 they are going to testify or have testified.

25 The order also means that from this point on, until the

1 hearing is finally closed, no witness may discuss with other
2 potential witnesses either the testimony that they have given
3 or that they intend to give. The best way to avoid any
4 problems is simply not to discuss the case with any other
5 potential witness until after the hearing is completed.

6 Under the rules applied by the Board, with one
7 exception, counsel for a party may not in any manner,
8 including by showing of transcripts of testimony, inform a
9 witness about the content of the testimony given by a
10 preceding witness without express permission of the Hearing
11 Officer.

12 However, counsel for a party may inform counsel's own
13 witness of the content of testimony and may show to a witness
14 transcripts of testimony given by a witness for the opposing
15 side in order to prepare for rebuttal of such testimony.

16 I expect counsel to police the sequestration order and
17 to bring any violation of it to my attention immediately.
18 Also, it is the obligation of counsel to inform potential
19 witnesses of their obligations under the order. It is also
20 recommended that as witnesses leave the witness stand, upon
21 completion of their testimony, they be reminded that they are
22 not to discuss their testimony with any other witnesses
23 unless the hearing is completed.

24 The Employer, as the objecting party, will have the
25 burden of proving that objectionable conduct occurred and

1 that the conduct interfered with the free choice of employees
2 to such a degree that it has materially affected the results
3 of the election.

4 I remind the parties that the evidence must be specific
5 and detailed in support of your position. General,
6 conclusionary statements by witnesses will not be sufficient.

7 **Okay. Let's go off the record.**

8 **(Off the record.)**

9 **HEARING OFFICER SUTCLIFF: On the record.**

10 Mr. Mitchell, would you go ahead please with your first
11 witness.

12 MR. MITCHELL: The Employer calls Mike Carrouth.

13 HEARING OFFICER SUTCLIFF: Mr. Carrouth, please come
14 forward. Please raise your right hand.

15 (Whereupon,

16 **MICHAEL CARROUTH**

17 was called as a witness by and on behalf of the Employer and,
18 having been first duly sworn, was examined and testified as
19 follows:)

20 HEARING OFFICER SUTCLIFF: Thank you. Please state your
21 name and spell it for the record.

22 THE WITNESS: Michael Carrouth, C A R R O U T H.

23 **DIRECT EXAMINATION**

24 Q. BY MR. MITCHELL: Mike, where do you work?

25 A. I work for Fisher Phillips law firm in Columbia, South

1 Carolina.

2 Q. Did you represent Garda at the pre-election conference
3 scheduled for the election, NLRB case 10-RC-15788, on July
4 21 --

5 A. Yes.

6 Q. -- 2010.

7 A. Yes.

8 Q. Is this the first election you've ever supervised?

9 A. It is not.

10 Q. Okay. Are you familiar with the procedure and how it's
11 supposed to work?

12 A. I am.

13 Q. How long have you been practicing labor law and/or these
14 type of cases?

15 A. Twenty-two years.

16 Q. What kind of company is Garda?

17 A. It is a cash logistics operation, basically an armored
18 car operation. They pick up and deliver cash to different
19 clients.

20 Q. And what type of employees are in the bargaining unit?

21 A. These were delivery drivers, drivers of the armored
22 trucks.

23 Q. Can you identify this document that I'm handing you?

24 A. (Reviews document.)

25 **(Employer's Exhibit 1 marked for identification.)**

1 Q. BY MR. MITCHELL: What is it?

2 A. This is a diagram of most of the Garda Smyrna Branch
3 operation.

4 Q. -- to your knowledge?

5 A. Yes.

6 MR. BROOKS: Objection, lay a foundation.

7 HEARING OFFICER SUTCLIFF: Sustained. Let's back up a
8 little bit and let's -- just tell us how he knows that this
9 is Garda.

10 MR. MITCHELL: I understand. I didn't you were going to
11 be -- okay.

12 Q. BY MR. MITCHELL: Have you ever been in the building?

13 A. I have.

14 Q. Okay. Is this a diagram of that building?

15 A. It is.

16 Q. Is this the same building where the vote was held?

17 A. It is.

18 Q. Is this an accurate diagram of the building that you
19 were in when the vote was conducted?

20 A. It is. This is their evacuation plan, part of their
21 evacuation and for emergencies.

22 MR. MITCHELL: I will submit that this be moved and put
23 into evidence.

24 MR. BROOKS: No objection.

25 HEARING OFFICER SUTCLIFF: Okay. Employer's Exhibit 1,

1 is that how you want this?

2 MR. MITCHELL: Yes.

3 HEARING OFFICER SUTCLIFF: Okay. Employer's Exhibit 1
4 is received into the record.

5 **(Employer's Exhibit 1 received into evidence.)**

6 MR. BROOKS: Which one is going to be the official
7 exhibit?

8 HEARING OFFICER SUTCLIFF: That one. Go ahead.

9 Q. BY MR. MITCHELL: Can you describe for the hearing
10 officer the building, just describe where the vote took
11 place, the bay, et cetera?

12 A. The vote took place in the break room over here. This
13 is the bay where all the trucks come in and are loaded and
14 unloaded during key parts of the day, during the beginning
15 and end of the day. There's a supervisor's office over here,
16 and there's an office in here where there are other
17 supervisors doing some type of cash logistics type work. But
18 that was the break room. There's a door that is shut all the
19 time there. That's a hallway, and behind that hallway is a
20 men and women's bathroom and locker room area down there.

21 Q. Okay. Do you know what type of work is conducted in the
22 bay?

23 A. What I understood, and what I observed while I was
24 there, they would be loading up trucks and getting them ready
25 to go out in the morning and returning them back to the bay

1 at the end of the day.

2 Q. How big is the -- just to give us an understanding, how
3 big is the bay and how many truck?

4 A. It's 45 paces from -- this is the entrance when you're
5 coming from the -- there's a bunch of the facility that's not
6 on here for security reasons, but this is the entrance into
7 the bay area right here that opens. There may be a door you
8 can close, but I've never seen it closed. It's always open.
9 And it's 45 paces from here to the door --

10 Q. Please describe here a little bit better.

11 MR. BROOKS: I mean going to object to the amorphous of
12 units being used to describe the distance. It's very simple
13 to measure distance and -- measure distance --

14 MR. MITCHELL: When he counted off 45 paces, that's not
15 an amorphous unit. That is the distance.

16 MR. BROOKS: We don't know what the distance is.

17 MR. MITCHELL: Well, you can go measure his pace.

18 HEARING OFFICER SUTCLIFF: Okay.

19 MR. BROOKS: I can go measure his pace.

20 HEARING OFFICER SUTCLIFF: I'm going to sustain the
21 objection for right now, but let's let him discuss how he
22 knows that it was 45 paces.

23 Q. BY MR. MITCHELL: Can you describe for the record where
24 you're talking about, walking from one area to another?

25 A. Just from this entrance over here.

1 Q. Okay. Is that entrance on the left --

2 A. Right here. To the left of the --

3 HEARING OFFICER SUTCLIFF: Can we have north, south,
4 east, west. That will help me directionally.

5 Q. BY MR. MITCHELL: Go ahead and mark the entrance that
6 you're talking about.

7 A. Number 1 will be the entrance that I'm talking about.

8 Q. Okay. And where is the door going toward the break area
9 where the vote was conducted?

10 A. Number 2 would be the door going into the break area.

11 Q. And did you ever have an opportunity to measure the
12 distance between number 1 and number 2?

13 A. Getting ready for hearings on both occasions, I walked
14 that, in paces, it's 45 steps from that line to that door,
15 45, so approximately 135 feet.

16 MR. BROOKS: Objection. Lack of foundation. He's just
17 encompassing all the --

18 MR. MITCHELL: I'm trying to finish my question.

19 HEARING OFFICER SUTCLIFF: Actually I'm going to
20 overrule it. I do believe it's relevant. But I will say,
21 when you say paces, are you counting -- is that another word
22 for steps?

23 THE WITNESS: Yes.

24 HEARING OFFICER SUTCLIFF: Then that's fine. Then
25 that's fine. I will -- let's forget the -- unless you use

1 the -- did you use a tape measure?

2 THE WITNESS: I did not.

3 HEARING OFFICER SUTCLIFF: Okay. Then let's go with
4 paces. Go ahead.

5 Q. BY MR. MITCHELL: And that was -- and what was the
6 number of paces?

7 A. It was 45 steps --

8 Q. 45 steps.

9 A. -- across the bay.

10 Q. Okay. And the original question I was asking you is how
11 many trucks did you observe in there at one time?

12 A. Early in the day, whenever I started in, it's full. I'm
13 not sure how many trucks that would be. I would guess --

14 MR. BROOKS: Objection to his guess.

15 THE WITNESS: -- over 20.

16 HEARING OFFICER SUTCLIFF: Sustained. How many? Don't
17 guess. To the best of your recollection.

18 THE WITNESS: It's full of trucks. I have no idea how
19 many trucks you can put in there.

20 Q. BY MR. MITCHELL: And are these the trucks that you
21 typically see at a Bank of America where they carry, a
22 typical Garda truck?

23 A. It's a Garda armored truck, and I have observed two
24 different sizes. One is larger than the other, and I'm not
25 sure how many of each truck there are. There's some trucks

1 that are bigger than others.

2 Q. Okay.

3 A. It's a big armored truck.

4 Q. Do you know what time the pre-election conference was
5 scheduled to begin?

6 A. 5:00 a.m. on July 21.

7 Q. And where was it scheduled to take place?

8 A. It was scheduled and did take place in the break room
9 where the voting area would be.

10 Q. And when did you arrive?

11 A. I arrived there right at 5:00 a.m.

12 Q. Okay. How do you know what time it was? Where did you
13 arrive? Did you arrive in the voting area or did you arrive
14 outside of the voting area?

15 A. I was in the break room at 5:00 a.m.

16 Q. Okay. And did you check your watch before you walked in
17 there?

18 A. I looked at my watch several times before I got in
19 there, but I did look at it once I got in there and it was
20 5:00 a.m.

21 Q. Did you look at it before you got in there?

22 A. I did look at it before I got in there. I looked at it
23 as I walked past the time clock.

24 Q. Where was the time clock?

25 A. The time clock is right here. I'll put a number 3 where

1 the time clock is so everybody understands where that is. At
2 number 3, there's a time clock here on the wall right there.

3 Q. Is the time clock digital or -- is it a digital clock?

4 A. It's a digital clock with a -- it's not a dark face with
5 a yellow illuminated numbers. It's a white face with black
6 illuminated numbers.

7 Q. And when you walked by the time clock in the morning,
8 did you -- you testified earlier that you observed the time
9 on that time clock, correct?

10 A. Yes, I walked by. It's right on the wall. The time
11 clock is blue. It's probably approximately a foot in width
12 and a foot in height, with the screen right in the middle of
13 it and I was just walking by it, and at the time we went
14 there, there were no trucks. I don't know if there ever any
15 trucks. There were no trucks up here near those office
16 doors.

17 Q. Okay. And did you look at your watch and look at the
18 time clock?

19 A. Yes.

20 Q. Were they the same?

21 A. Correct, they were.

22 Q. And was your watch to your knowledge accurate?

23 MR. BROOKS: Objection.

24 THE WITNESS: It read --

25 HEARING OFFICER SUTCLIFF: I'm sorry.

1 MR. BROOKS: Objection.

2 HEARING OFFICER SUTCLIFF: What's --

3 MR. BROOKS: What does that have to do with --

4 HEARING OFFICER SUTCLIFF: All right. I'm going to
5 sustain the objection, I guess. All you can speak to is what
6 your watch read. Is that correct?

7 THE WITNESS: That's all I can say, yes.

8 HEARING OFFICER SUTCLIFF: Okay.

9 Q. BY MR. MITCHELL: And did you ever have any reason to
10 believe afterwards or before that your watch was off time?
11 Did you have any reason to believe your watch was slow or
12 fast?

13 A. No.

14 HEARING OFFICER SUTCLIFF: This time clock, is it
15 obstructed in any way? I mean describe to me what I'm
16 looking at when I actually look at the time clock?

17 MR. MITCHELL: Maybe I can help you and put something
18 into evidence.

19 HEARING OFFICER SUTCLIFF: Okay. Never mind. Go ahead.

20 MR. MITCHELL: Let me just go ahead and do that.

21 **(Employer's Exhibit 2 marked for identification.)**

22 Q. BY MR. MITCHELL: Would you please identify this
23 document or the picture here?

24 A. This is a photograph of the area on the bay wall where
25 the time clock is located, and this is a picture of the time

1 clock. The time clock that was in effect and being used and
2 the time clock that I observed is the box there, the large
3 box in the middle, I'd say approximately a foot wide and a
4 foot high, and again it's a white illuminated screen with the
5 black numbers as opposed to a black screen with yellow.

6 Q. Can you identify for the Hearing Officer on Exhibit 1
7 where this picture is located? Look at Exhibit 1 and
8 identify where --

9 A. Number 3, that's the wall area, that's the wall of the
10 two doors. There's a door here and a door here. That's
11 those two doors right there. So that section of the wall
12 right between those two doors.

13 MR. MITCHELL: I move this into evidence as Exhibit 2.

14 MR. BROOKS: No objection

15 HEARING OFFICER SUTCLIFF: Employer's Exhibit 2 is
16 received into the record.

17 **(Employer's Exhibit 2 received into evidence.)**

18 Q. BY MR. MITCHELL: Were there any other Employer
19 representatives at the pre-election conference?

20 A. Yeah, Earl McConnell and Fred Greaves.

21 Q. And the Board Agent was there, correct?

22 A. She came in once we got there, about the same time,
23 that's correct.

24 Q. And was there an employee representative from Garda?

25 A. There were two. There was an observer for the Union and

1 an observer for the company that were also in the room at
2 that time, and the Labor Board also had an intern who was
3 there, too. So there was an intern who was observing the
4 process.

5 Q. Do you remember what time the Board Agent came into the
6 voting area?

7 A. Everybody basically got in there about 5:00 a.m.

8 Q. Okay. And did she describe her background to you?

9 A. She did.

10 Q. What did she say?

11 A. She said she was an attorney here in the Region and
12 hadn't run an election in a while.

13 Q. Describe what happened? Did the Board Agent cover the
14 normal pre-election conference items like respecting to the
15 voting area, et cetera?

16 A. She did. It was a very small area, so it didn't take
17 very long.

18 Q. What type of voting booth did she have?

19 A. It was the -- it's the one that has the legs you stick
20 into it and just folds up on three sides. It didn't have the
21 curtain to put around it. It was just very small. It stood
22 up on its own four legs. It was basically plastic with
23 aluminum legs and the three sides on it, as I recall.

24 Q. Okay. Did she explain the duties to the union observers
25 that day?

1 A. I remember her discussing that. I had already met with
2 our observer. I remember her discussing that. I can't
3 remember if she went into great detail and covered all the
4 items on the list or just asked the observers if they had any
5 questions. She talked to the observers and she confirmed one
6 way or the other that they understood what they needed to do
7 and did give them some instruction, but I'm not sure she went
8 through the whole checklist of things.

9 Q. Did she ever -- after she finished talking with them,
10 did she confirm the time?

11 A. She did. She had everything set up. There was a table
12 basically over here, a little small table, enough room for
13 the --

14 Q. Can you draw it?

15 A. Yeah, just a little -- right here was the table. This
16 rectangular.

17 Q. Where was the voting booth?

18 A. And I'll put 4. As I recall, the voting booth was right
19 here, and I'll put a 5 where the voting booth was because I
20 remember there was another -- I'm going to take that back.
21 Number 4 will be, there's a table in the room. Number 5 was
22 basically where the voting table was where I guess the voting
23 list was, and number 6 here will be where the voting booth
24 was where they voted. So there was just a big table, I think
25 it's a table that's maintained in the break room all the

1 time. It's against that wall, and number 5 was the table
2 right there. It could have been further down. When they
3 walked in, as I recall, she said if they walk in, go to this
4 table, state their name, give them their ballots, walk over
5 here and vote, and I think she put the ballot box on that
6 table over there.

7 HEARING OFFICER SUTCLIFF: The ballot box is on which
8 number?

9 THE WITNESS: Number 4.

10 HEARING OFFICER SUTCLIFF: Okay. Thank you.

11 Q. BY MR. MITCHELL: Did she confirm the time after she
12 finished?

13 A. She did.

14 Q. And what did she say?

15 A. She said, well, I've got 5:20.

16 Q. Did you say anything in response to her?

17 A. I did because my watch read 5:15, and I said your watch
18 is fast.

19 Q. Did anybody else, to your knowledge, did anybody else
20 look at their watch?

21 A. The other two company representatives, Earl McConnell
22 and Fred Greaves also spoke up and confirmed that the time
23 she stated was faster than the time they had on their
24 watches. At least one of them indicated that their watch was
25 5 minutes behind the time that the Board Agent, Board

1 representative stated.

2 Q. Why did you raise this issue?

3 A. Well, as I had explained earlier, I had walked, you
4 know, without understanding or knowing that the time was
5 going to be relevant, I just walked by and confirmed that my
6 watch was consistent with the time clock in the work area.
7 So when she stated 5:20, I looked at my watch, and it said
8 5:15, I automatically knew that that time was 5 minutes
9 faster than the time that I assumed and thought that the
10 employees would be looking at to confirm how much time they
11 had left to vote. So I raised that issue because I felt that
12 would be the most accurate time for the employees deciding
13 when they were going to vote. So I was concerned that
14 employees voting would show up at the end of the voting
15 period and not have enough time based on her watch.

16 HEARING OFFICER SUTCLIFF: What was the timepiece that
17 the Board Agent had?

18 THE WITNESS: She just had a watch. She just had a
19 watch. I didn't get close enough to her to see if it was
20 digital or if it was just a regular watch.

21 Q. BY MR. MITCHELL: And did you raise your concern to
22 Ms. Myers?

23 A. I did. I explained that that's fast, and it's faster
24 than what I believe the time would be on the time clock,
25 which is what I thought people would be relying on to come

1 vote.

2 HEARING OFFICER SUTCLIFF: And Ms. Myers -- who's
3 Ms. Myers?

4 MR. MITCHELL: The background.

5 HEARING OFFICER SUTCLIFF: We haven't identified her
6 yet.

7 Q. BY MR. MITCHELL: Can you identify the Board Agent?
8 Does Kristen Myers sound like it?

9 A. I think that's correct. I think the name was Kirsten
10 Myers. I think that's correct.

11 HEARING OFFICER SUTCLIFF: Okay. Go ahead.

12 Q. BY MR. MITCHELL: How far was the time clock -- well,
13 did you have an opportunity to measure with your steps how
14 far the time clock was from the voting area?

15 A. I did not measure with steps how far the time clock is
16 but it's from --

17 MR. BROOKS: Objection. He's answered the question.

18 HEARING OFFICER SUTCLIFF: Sustained. If you didn't
19 measure, you didn't measure it.

20 Q. BY MR. MITCHELL: Do you how far that is?

21 MR. BROOKS: He was asked if he measured with steps and
22 he said no.

23 HEARING OFFICER SUTCLIFF: Did you measure it any other
24 way?

25 MR. BROOKS: I didn't --

1 HEARING OFFICER SUTCLIFF: Well, he didn't measure it
2 with steps. Did you measure it in any other way?

3 THE WITNESS: No.

4 Q. BY MR. MITCHELL: Okay. Did you ever walk from the
5 voting area by the time clock?

6 MR. BROOKS: Objection. Relevance.

7 HEARING OFFICER SUTCLIFF: Overruled. That's relevant.

8 THE WITNESS: Yes.

9 Q. BY MR. MITCHELL: How long did it take you to get from
10 the voting area to the time clock?

11 MR. BROOKS: Objection. Lack of foundation. It's very
12 simple. Why he wants to establish distance is apparently
13 they do -- they had two opportunities to prepare for this
14 hearing and -- evidence not --

15 MR. MITCHELL: I --

16 MR. BROOKS: -- some witness who we don't know what his
17 gait is, we don't know how fast he walks. We don't know his
18 shoe size. We don't know how that relates to distance. How
19 is any of this relevant?

20 HEARING OFFICER SUTCLIFF: I'm going to overrule the
21 objection. I do think it's relevant. If you want to answer
22 the question, and I'll give it whatever weight I deem based
23 on the credibility of the witness. Go ahead.

24 Q. BY MR. MITCHELL: How long did it take you to get from
25 the voting area --

1 A. A second.

2 Q. -- to the time clock?

3 A. A second. It is eight feet from the time clock --

4 MR. BROOKS: Objection. Lack of foundation.

5 HEARING OFFICER SUTCLIFF: I'm going to sustain it.

6 Don't measure -- if you don't know exactly by feet, just give
7 me how long did it take you to get there?

8 Q. BY MR. MITCHELL: How long did it take you to get there?

9 A. Seconds.

10 Q. Okay.

11 HEARING OFFICER SUTCLIFF: Okay.

12 Q. BY MR. MITCHELL: Is it fair to say it was close?

13 MR. BROOKS: Objection. Argumentative.

14 MR. MITCHELL: He can do that.

15 MR. BROOKS: Let's just get the evidence in.

16 HEARING OFFICER SUTCLIFF: I'm going to overrule because
17 I find that relevant. So --

18 MR. BROOKS: Close? What does close mean?

19 HEARING OFFICER SUTCLIFF: I'm going to ask him if
20 his -- because he was there on site, I want to know to the
21 best of his ability if he walked it, how long it took. If
22 you measured it, how you measured it. If you walked it, how
23 long did it take?

24 MR. MITCHELL: He testified seconds.

25 HEARING OFFICER SUTCLIFF: Okay. Go ahead. What's the

1 next question?

2 Q. BY MR. MITCHELL: Would it take the Board Agent
3 presumably that long to go check the time clock?

4 A. Yeah, it --

5 MR. BROOKS: Objection. Argumentative. Speculative.

6 THE WITNESS: It's just around the corner. And --

7 HEARING OFFICER SUTCLIFF: I'll sustain it. It's
8 speculative, not argumentative. I'll overrule on
9 argumentative. Go ahead.

10 MR. MITCHELL: I think what we got what we want. It's
11 around the corner.

12 Q. BY MR. MITCHELL: How did Ms. Myers respond to your
13 objection regarding the difference in time?

14 A. When I spoke up and said your watch is fast, it's 5
15 minutes fast, and at my explanation, the other two
16 representatives looked at their watch and stated that based
17 on their observation of their watch and what she said, her
18 watch was fast, and at that point, she basically in my
19 observation appeared to be irritated and said, well, I have
20 the official time, and that was all. That was all she said
21 about it.

22 Q. Did she go and check it against the time clock?

23 A. She did not go and check.

24 Q. Have you had an opportunity to check the accuracy of the
25 time clock with any other timepiece recently?

1 A. The time clock?

2 Q. Yes.

3 A. Yes, we just have.

4 Q. Okay. And can you explain when you took that
5 opportunity?

6 A. There were myself and two other individuals went out to
7 the time clock that is used, the one that's in the center of
8 the picture, and observed the time on the time clock with our
9 three cell phones, and the time on the time clock --

10 MR. BROOKS: Objection. It's non-responsive to the
11 question. The question was when.

12 HEARING OFFICER SUTCLIFF: Sustained. When did you do
13 this?

14 THE WITNESS: Yesterday.

15 HEARING OFFICER SUTCLIFF: Okay. Who was with you?

16 THE WITNESS: Mr. McConnell and Mr. Greaves.

17 HEARING OFFICER SUTCLIFF: Okay. Go ahead.

18 Q. BY MR. MITCHELL: And what did you do?

19 A. We looked at --

20 MR. BROOKS: Objection. Relevance --

21 MR. MITCHELL: If you let us continue to finish, we can
22 explain exactly how it's relevant.

23 HEARING OFFICER SUTCLIFF: I'm going to overrule the
24 objection.

25 Q. BY MR. MITCHELL: And so what did you do?

1 A. We looked at the time clock and we observed the time
2 clock time and we looked at our cell phones, and it said 3:13
3 and while we were standing there, within two to three
4 seconds, our phones and the time clock all switched over
5 3:14.

6 Q. Do you know what your phone is set to?

7 A. Well, based on that, we investigated and called through
8 and confirmed that the time clock there is set on a system
9 for Garda that's maintained and managed by ADP, a payroll
10 management system, and the time is managed through the ADT
11 server system which feeds off of a Windows server system
12 which feeds directly off of the time maintained by the
13 National Institute of Standards and Technology which is --
14 that's why everybody's cell phone, the battery that goes in
15 your cell phone, you stick a battery back in, the time pops
16 right back up, and that's why -- that time clock has never
17 been anything but accurate because it's set to the ADT server
18 system which is set to the Windows Microsoft server system --
19 National Institute of Standards and Technology which uses
20 the -- to confirm that.

21 MR. BROOKS: Now that the witness is finished,
22 objection. He said we called. There's no direct foundation.

23 HEARING OFFICER SUTCLIFF: I didn't hear the last part.

24 MR. BROOKS: He said we called. Who's we?

25 HEARING OFFICER SUTCLIFF: Okay. Sustained. Who

1 called?

2 THE WITNESS: Earl McConnell called --

3 MR. BROOKS: Object and move to strike his last answer.

4 HEARING OFFICER SUTCLIFF: Were you -- hold on. Were
5 you in the room?

6 THE WITNESS: Yes.

7 MR. BROOKS: When he called and talked to payroll, was
8 it a speakerphone?

9 MR. MITCHELL: If I can ask the questions, I think we
10 can get it through.

11 HEARING OFFICER SUTCLIFF: Yes, I'm going to overrule,
12 and let him ask the questions.

13 Q. BY MR. MITCHELL: When did you have the conversation
14 that you just referenced?

15 A. When we were investigating and determining whether it
16 was ever possible for that time clock to ever be slow.

17 Q. And did Earl call someone on the telephone?

18 A. He did. He called their payroll service manager who
19 runs the payroll operations for the entire Garda system, not
20 just for that branch, but the entire Garda system, put him on
21 the speakerphone, a gentleman by the name of Leo, and Earl
22 told Leo what we were doing, and I asked him questions, and
23 he responded over the cell phone.

24 Q. What were the questions that you asked?

25 A. I asked, one, have you ever had any reports of this time

1 clock ever being slow or having problems with the time, and
2 he said no.

3 MR. BROOKS: Objection. Hearsay.

4 HEARING OFFICER SUTCLIFF: Overruled. He's in the room.
5 He's asking the questions.

6 MR. BROOKS: No, but the information that's being
7 offered for the truth of the matter --

8 MR. MITCHELL: No, he's --

9 MR. BROOKS: It's coming from an ADP representative
10 who's not here for me to cross-examine. We don't even have a
11 written -- well, I can cross-examine someone, but I can't
12 cross-examine the person who's making the statements -- we
13 don't even have a statement here from ADP verifying their
14 systems. All we're going to have is someone who talked to
15 someone and this is what they said. How am I supposed to
16 question or cross-examine?

17 MR. MITCHELL: I will put an e-mail and he can cross-
18 examine the person who received the e-mail.

19 HEARING OFFICER SUTCLIFF: Actually I'm going to
20 overrule on the basis of he's involved. He's a direct part
21 of the conversation. So how's that hearsay?

22 MR. BROOKS: Because they are putting in what the ADP
23 representative said. That's a third party.

24 MR. MITCHELL: He's stating what he relied on.

25 MR. BROOKS: Pardon me.

1 MR. MITCHELL: That's what he relied on. He's
2 testifying what he relied on --

3 MR. BROOKS: Okay. The evidence is based on hearsay at
4 this point. Is it going to the truth of the matter? Because
5 otherwise the investigation is useless and should be
6 stricken.

7 HEARING OFFICER SUTCLIFF: Okay. I'm going to overrule
8 the objection. I'm going to let him follow -- I'll give it
9 whatever weight, I'll give it whatever weight it deserves,
10 okay.

11 MR. BROOKS: It's difficult for me because I don't know
12 what weight it deserves, and I'm not allowed to cross-
13 examine --

14 HEARING OFFICER SUTCLIFF: Your objection is noted.

15 MR. BROOKS: And it's their charge, two times now to try
16 it, and they've had every opportunity to bring --

17 MR. MITCHELL: Our --

18 MR. BROOKS: -- to this hearing, and I'd appreciate not
19 being interrupted by counsel.

20 HEARING OFFICER SUTCLIFF: Go ahead, Mr. Mitchell. What
21 was the question?

22 MR. MITCHELL: I don't remember the question now.

23 THE WITNESS: Can I clarify one thing? I never --

24 MR. BROOKS: I'm don't know what the witness is
25 clarifying.

1 HEARING OFFICER SUTCLIFF: I'm sorry. What?

2 MR. BROOKS: I don't know what the witness is
3 clarifying.

4 THE WITNESS: Your mistake. I never --

5 MR. BROOKS: Objection. The witness is trying to act as
6 a lawyer, and he's here to testify.

7 HEARING OFFICER SUTCLIFF: Okay.

8 MR. BROOKS: He's supposed to answer questions with
9 facts. He's not supposed to volunteer information. He's
10 supposed to answer the question he's asked.

11 HEARING OFFICER SUTCLIFF: I'm going to sustain that.
12 That was argumentative. Go ahead.

13 THE WITNESS: I never testified that I thought he meant
14 ADP. He says that I talked to ADP. I talked to the Garda
15 payroll manager, the person responsible for the Garda payroll
16 system who explained to me that it's run through ADP and it's
17 run North America-wide. All their operations run off the
18 same time clock.

19 HEARING OFFICER SUTCLIFF: Go ahead.

20 Q. BY MR. MITCHELL: And is that the basis for why you
21 believe it's accurate?

22 A. Bottom line, the result of my investigation that I did
23 firsthand was to determine whether that time clock would ever
24 be inaccurate, and basically what I concluded, based on my
25 investigation and review --

1 MR. BROOKS: Objection. This is his conclusions. We're
2 here to get facts, not his conclusions. It's self-serving
3 conclusions by the Employer about the case are not
4 appropriate for this hearing. They can put facts --

5 HEARING OFFICER SUTCLIFF: I'll sustain that objection.

6 Q. BY MR. MITCHELL: You're just testify to the facts that
7 he gave you.

8 A. Well, he gave me the information that allowed me to
9 investigate the facts.

10 Q. Okay.

11 A. Which is that the National Institute of Standards --

12 MR. BROOKS: Objection.

13 THE WITNESS: -- and Technology --

14 MR. MITCHELL: Those are facts

15 MR. BROOKS: Yeah, but that wasn't the question to him.
16 Yes, the witness is just saying whatever he wants at any time
17 he wants in this hearing. He has to answer questions and
18 keep his answers limited to the question he's asked.

19 HEARING OFFICER SUTCLIFF: I'll sustain the objection.

20 Q. BY MR. MITCHELL: What is the basis for our belief that
21 the time clock was accurate?

22 MR. BROOKS: Objection. He's testified as to what they
23 claim are the facts --

24 MR. MITCHELL: The fact -- I'm sorry.

25 MR. BROOKS: He's already testified as to what they

1 claim are the facts, and whether or not that reaches the
2 level that someone could conclude that it was accurate or
3 not --

4 MR. MITCHELL: I would like him to restate the facts
5 because he's been interrupted so many times.

6 HEARING OFFICER SUTCLIFF: I'm going to sustain the
7 objection. Yeah, and I agree because now I get lost in what
8 he's trying to say. So go ahead.

9 Q. BY MR. MITCHELL: What is the basis for your -- do you
10 have a basis for believing that the time clock was accurate?

11 A. I do.

12 Q. And what are the facts that support your belief?

13 A. That that time clock is based on an internet driven
14 computer system and all internet driven computer systems
15 based on my investigation are run off of the atomic time
16 maintained by the National Institute of Standards and
17 Technology again, which is why when your battery falls out of
18 your phone and you plug it back it, the correct time flashes
19 back, and when your laptop goes dead and you plug it back in,
20 it has the right time because once you feed into the
21 internet, you always have the correct time, and that's
22 exactly the same time basis that's used for that time clock.

23 Q. Okay. What happened after Ms. Kirsten said that she had
24 the official timepiece?

25 A. That was basically the end of the whole pre-election

1 conference. We basically left at that point.

2 Q. And where did you go?

3 A. We left the break room area and went to a conference
4 room that's in the front of the facility.

5 Q. Can you explain what door you went through based on the
6 exhibit?

7 A. Yeah. I left the break room through the only door in
8 the break room and actually through the only door at the end
9 of the hallway and went back across the bay, went out the
10 door marked number 1 and back up into here where there's no
11 diagram of that.

12 Q. Okay. Did you learn about a motorcycle accident that
13 day?

14 A. Yeah, after the first voting period started, I learned,
15 there were reports coming in from employees coming to work
16 and through the management there, that there was an accident
17 outside or near the facility.

18 Q. Okay. Do you know where it happened, where the accident
19 happened?

20 A. It happened relatively close to the facility, but that's
21 all I know.

22 Q. Do you have any knowledge if it affected employees'
23 ability to get into work?

24 A. It affected employees --

25 Q. Do you have any knowledge?

1 A. Yes.

2 Q. Okay. And what do you base that knowledge on?

3 A. The fact that later when they were receiving calls and
4 receiving reports from employees who couldn't get to the
5 facility and drivers who couldn't leave on time.

6 HEARING OFFICER SUTCLIFF: What time was this?

7 THE WITNESS: I think -- the voting period started at
8 5:30, and I think it was about 7:30 is when they started
9 getting reports as well as I recall.

10 HEARING OFFICER SUTCLIFF: What kind of an accident was
11 it?

12 THE WITNESS: It was a motorcycle accident. I think a
13 motorcycle driver was hit at an intersection. I think it was
14 a fatality.

15 HEARING OFFICER SUTCLIFF: Do you know how many
16 employees called in?

17 THE WITNESS: More than one, but I do not know the exact
18 number.

19 HEARING OFFICER SUTCLIFF: Go ahead.

20 Q. BY MR. MITCHELL: Did you attend the closing conference
21 for the first voting session?

22 A. I did.

23 Q. Who else attended?

24 A. Again, Mr. McConnell for the company and Mr. Greaves for
25 the company.

1 Q. Do you know what time you arrived at the voting area?

2 A. After 8:30 on my clock. I think 8:32 is when --

3 Q. How do you know that?

4 A. I just looked at my clock and realized because I
5 obviously had done this because I did not want to walk into a
6 voting area when it might still be open or people might be
7 voting. So I always wait a little bit past what I understand
8 the closing time would be. So I clearly looked at my watch
9 to make sure I didn't go there anywhere near close to the
10 time when people could be voting.

11 Q. And was your watch still set based on the time clock
12 time?

13 A. Yes, as far as I know, yes.

14 Q. So based on your testimony earlier that the Board
15 Agent's clock was 5 minutes faster, if your watch said 8:32,
16 what time would her watch have said?

17 A. I could assume her watch would have said about 8:37.

18 Q. Okay. When you got to the bay, I believe it's where
19 number 3 is, the entrance to the bay --

20 A. That's number 1.

21 Q. I'm sorry. I apologize. I don't have it in front of
22 me. Number 1, okay. Did the Board Agent post an official
23 notice anywhere outside of the break room?

24 A. She did two. She did one on the door here, the door --

25 Q. Which is where?

1 A. Going into the break room.

2 Q. Right.

3 A. And she did one right here on the door that's always
4 closed as far as I've always observed going into that hallway
5 when you get to the break room.

6 Q. What's the number on that?

7 A. 2. She posted one on the door where number 2 is.

8 Q. When you got to the bay where number 1 is, at 8:32, did
9 you see the posting where the door is where number 2's at?

10 A. No, it was down.

11 Q. When you entered the break room, what did you observe?

12 A. I came in. The observers were in the room, and I think
13 everything had already been packed up by -- I don't know who
14 packed it up. It had all been packed up. I assumed the
15 Board Agent would have.

16 Q. Did the Board Agent -- had the box been taped yet or was
17 she waiting for you.

18 A. No, the box had not been taped. They did that when we
19 got there.

20 Q. Okay. When you entered the room did Ms. Myers say
21 anything to you?

22 A. Yeah, she reported that at the time or after she had
23 closed the polls, that there were a number of employees who
24 had come in to vote, and she told them they could vote
25 subject to challenge or come back for the afternoon voting

1 session.

2 Q. Did you respond to her statement?

3 A. At that point, that's when I said, that was the whole
4 issue of me raising the problem with your time at the
5 beginning of the voting period is that because of the nature
6 of the work, these people are going to be coming in here at
7 the end of that voting period because that's what their work
8 duties would sort of force them to do. They -- vote before
9 they went out and did their runs. I just made that clear
10 that that was the problem I was trying to avoid by raising
11 that initially.

12 Q. Did the Board Agent indicate how many voters she turned
13 away? Do you remember?

14 A. The number three comes to mind, and I'm assuming she
15 said about three, but I heard the number three.

16 HEARING OFFICER SUTCLIFF: Who else was in the room when
17 this conversation went on?

18 THE WITNESS: At this point, it was myself, Earl
19 McConnell, the district manager, Fred Greaves, the branch
20 manager, the Board representative, the Union observer and the
21 company observer.

22 HEARING OFFICER SUTCLIFF: What are the names of the two
23 observers?

24 THE WITNESS: Charetta --

25 MR. MITCHELL: May I state her last name?

1 MR. BROOKS: Go ahead.

2 MR. MITCHELL: Robinson.

3 THE WITNESS: Charetta Robinson, and I don't know the
4 Union's observer's name. She's here in the room.

5 HEARING OFFICER SUTCLIFF: Charetta Robinson was the
6 Employer's observer?

7 MR. MITCHELL: Correct.

8 HEARING OFFICER SUTCLIFF: Go ahead.

9 THE WITNESS: And the Labor Board had their intern still
10 there.

11 HEARING OFFICER SUTCLIFF: Oh, the intern. The intern's
12 name, do you know?

13 THE WITNESS: No.

14 HEARING OFFICER SUTCLIFF: Okay. Go ahead.

15 Q. BY MR. MITCHELL: Did Ms. Myers respond to your
16 concerns?

17 A. Not really.

18 Q. What happened after that?

19 A. The box was sealed up, and then Ms. Myers, the Board
20 representative, and the intern were escorted out of the
21 facility.

22 HEARING OFFICER SUTCLIFF: When you say sealed up, do
23 you mean -- describe the box for me.

24 THE WITNESS: You know, it was one of those little
25 cardboard boxes that's prefabricated, that has the hole built

1 into the top.

2 HEARING OFFICER SUTCLIFF: Okay.

3 THE WITNESS: So I think it was over on the picnic table
4 that was in -- where number 4 is over here. I think that's
5 where it was, and they just had the observers tape it up --

6 HEARING OFFICER SUTCLIFF: Okay.

7 THE WITNESS: -- in front of everybody.

8 HEARING OFFICER SUTCLIFF: Okay. So it was taped up and
9 sealed in front of you.

10 THE WITNESS: That's right.

11 HEARING OFFICER SUTCLIFF: Okay. Got you. Go ahead.

12 Q. BY MR. MITCHELL: All right. Did you attend the pre-
13 election conference for the second voting period?

14 A. I did.

15 Q. What time was the pre-election conference scheduled for?

16 A. 3:30.

17 Q. And when was the vote to begin?

18 A. 4:00.

19 Q. When was the vote to end?

20 A. 8:00.

21 Q. Was Ms. Myers in the voting area when you arrived?

22 A. She was not.

23 Q. Okay. Did she eventually come to the voting area?

24 A. She again was escorted by Mr. Greaves.

25 Q. And do you know what time it was?

1 A. It was right at 3:30.

2 Q. Did she say anything to you when you saw her in the pre-
3 election conference?

4 A. Yeah, I think Mr. Greaves held the door for her. She
5 had to bring all the equipment in the room, yes. She came in
6 and as she came up the hall, she was saying, well, I've set
7 my watch to the time clock.

8 Q. Okay. And what did you say?

9 A. She sort of said it in a joking kind of way. I didn't
10 respond at all.

11 Q. Okay. Did you raise any other issues with her at that
12 time?

13 A. No, sir.

14 HEARING OFFICER SUTCLIFF: When she said she set her
15 watch, did you have occasion to look at when she said that?

16 THE WITNESS: To look at her watch?

17 HEARING OFFICER SUTCLIFF: Yes.

18 THE WITNESS: No, ma'am.

19 HEARING OFFICER SUTCLIFF: Go ahead.

20 Q. BY MR. MITCHELL: And you testified earlier -- when did
21 the voting period end again?

22 A. The second one was 8:00.

23 Q. What did you do after it ended?

24 A. We went back up there at a few minutes after 8:00, and
25 we had the vote count.

1 Q. And do you recall how many eligible voters there were?

2 A. That unit was 79 eligible voters.

3 Q. And do you recall how many employees voted against
4 representation?

5 A. Twenty-nine.

6 Q. Do you recall how many employees voted for
7 representation?

8 A. Thirty.

9 Q. How many employees did not vote?

10 A. Twenty employees did not vote, but we --

11 MR. BROOKS: Objection. He's answered.

12 HEARING OFFICER SUTCLIFF: Sustained.

13 MR. MITCHELL: Okay.

14 Q. BY MR. MITCHELL: And do you have any knowledge if any
15 of those 20 could not have voted?

16 A. I do not have any knowledge of whether they could not
17 have voted, but I do have knowledge of three individuals that
18 we were going to strike from the voter list.

19 Q. Okay. And why were you going to strike them?

20 A. Well, two had been terminated and one gentleman had
21 transferred from the Smyrna, Georgia facility to a Garda
22 facility in Memphis, Tennessee. He was already gone. So we
23 were just going to strike those three people off the voter
24 eligibility list, but the Union didn't have a representative
25 there. So the Board Agent I think said we couldn't modify

1 the voter eligibility list. That's why they were still at 79
2 as opposed to I guess 76, which would have been the correct
3 number. So 17 people could have voted.

4 MR. MITCHELL: Okay. That's all I have.

5 MR. BROOKS: Could I have the statement, please?

6 HEARING OFFICER SUTCLIFF: Do you want time to review
7 it?

8 MR. BROOKS: Well, I have read it before. So it
9 shouldn't take that long.

10 HEARING OFFICER SUTCLIFF: Okay. Go ahead.

11 **CROSS-EXAMINATION**

12 Q. BY MR. BROOKS: Mr. Carrouth --

13 A. Yes, sir.

14 Q. -- after you returned to the voting area at the close of
15 the morning session, you testified that you told Ms. Myers
16 that the individuals who voted -- strike all that.

17 You testified that you returned to the voting after the
18 morning session. Is that correct?

19 A. Yes.

20 Q. Okay. And that Ms. Myers made a statement to you with
21 respect to certain individuals who had arrived the polls had
22 closed?

23 A. She said people showed up after the closed the polls,
24 yes.

25 Q. Okay. And if she testified that she told you that she

1 closed the polls after the time for closing them, indicated
2 on her watch, correct?

3 A. She didn't tell me when she closed. She said people
4 showed up after I closed the polls. We didn't have any
5 discussion at the time.

6 Q. She didn't tell you that she closed the polls based on
7 the time on her watch?

8 A. No.

9 Q. And you stated to her what -- what did you tell her in
10 response?

11 A. When she said that, I was, you know, I had a tone of,
12 you know, that's exactly why I told you that we needed to
13 adjust your clock because this was going to happen. You were
14 fast. People were going by that clock and they were going to
15 come in right at 8:30 or close to 8:30 based on that clock
16 that's very close to the voting area, and that's when she
17 just said, well, I told them, she again repeated, well, I
18 told them they could vote subject to challenge, to come back
19 in the afternoon. That's basically --

20 Q. She didn't say anything else?

21 A. That was about it.

22 Q. She didn't tell you that you had failed to object during
23 the --

24 A. Well, she did say that and I said I did raise that
25 issue, and I'm not aware of any Board requirement that I have

1 to use the term object. She was notified that her clock was
2 fast.

3 Q. Okay. So you told her at the end of the morning
4 session, that this is why you wanted to adjust her watch?

5 A. Correct.

6 Q. And she responded you had an opportunity to object
7 before the polls open?

8 A. That's right, and then I responded by saying I did.

9 Q. Okay. When she told you that she had closed the polls
10 and that individuals came after the polls had closed to vote,
11 and that she told them they could vote subject to challenge,
12 come back in the afternoon, did any of the other individuals,
13 specifically the observers who would have been in the room
14 during this conversation with the voters, make a statement
15 that Ms. Myers was inaccurate in telling you this
16 information?

17 A. Repeat that again.

18 Q. That was a lawyer's question. Ms. Myers told you that a
19 number of individuals came the polls after they closed,
20 correct?

21 A. Correct.

22 Q. And that she told them they could vote subject to
23 challenge or in the afternoon, correct?

24 A. Correct.

25 Q. And when she told you this, the two observers were

1 standing in the room, correct?

2 A. Correct.

3 Q. The Employer observer and the Union observer.

4 A. Yes, sir.

5 Q. And you indicated that the Employer's observer's name is
6 Ms. Robinson.

7 A. Charetta, yeah.

8 Q. Charetta. I -- name of the observers. So did Charetta
9 at that point say, Ms. Myers, you're wrong. These
10 individuals came before the polls closed.

11 A. No, she -- after I -- no, she did not say that.

12 Q. Did she say anything with respect to these people, with
13 respect to the number of voters who came in after the polls
14 closed?

15 A. She did not, and I said that.

16 Q. Did you give a statement to the Region with respect to
17 the events that you alleged took place on July 21, 2010?

18 A. Yes, sir.

19 Q. And do you recall in that statement relating what
20 Ms. Myers said as to the basis for her closing the polls for
21 the morning session?

22 A. No, I don't.

23 Q. Do you remember in that statement making a statement
24 that Ms. Myers said that she closed the polls based on the
25 time on her watch?

1 A. No, I do not.

2 Q. I'm going to show you the affidavit that been given to
3 me and ask that you identify the document as being yours,
4 sir?

5 A. Yes, this would be my affidavit.

6 Q. Would you look at paragraph 12, please?

7 A. All right. Yes, sir.

8 Q. Does that refresh your memory as to whether Ms. Myers
9 stated that she closed the polls based on the time on her
10 watch?

11 A. That's what it says in my affidavit, but I assume that
12 when I took this, that was more -- but I don't recall her
13 saying anything about a watch. I just remember her saying
14 that when she closed the polls, that people came after she
15 closed the polls. But it does say in the after, that she
16 closed the polls based on the time on her watch.

17 Q. And what's the affidavit dated?

18 A. August 3rd, but I assume she would have used her watch
19 to close the polls.

20 Q. I'm not talking about what you assume. You stated in
21 that affidavit --

22 A. Right.

23 Q. -- that she that she closed the polls based on the time
24 on her watch, correct?

25 A. Yes, but --

1 Q. You didn't say --

2 MR. MITCHELL: Let him finish his answer.

3 THE WITNESS: She didn't tell me she closed it on time
4 though.

5 Q. BY MR. BROOKS: Again, you can argue what you want, sir,
6 at any point. I'm asking you a simple question. And since
7 August 3rd at least, you've forgotten the details as to what
8 took place that day.

9 A. I'm recalling -- I don't recall her telling me that she
10 closed -- today, I do not recall her telling me that she
11 closed it based on the time on her watch.

12 Q. Well, you signed that statement under the penalty of
13 perjury, correct?

14 A. Yes.

15 Q. Was it accurate and honest?

16 A. I assume that that's probably what I recalled at the
17 time, yes.

18 Q. You assume that was probably what you recall at the
19 time?

20 A. At the time that's what I recalled, but I'm telling you
21 today I didn't remember she said that.

22 Q. So you forgot that detail?

23 A. Yes.

24 Q. What other details have you forgotten?

25 A. None.

1 Q. Okay. How do you know?

2 A. You've asked me a lot of questions.

3 MR. BROOKS: I don't have any further questions.

4 HEARING OFFICER SUTCLIFF: Any redirect?

5 MR. MITCHELL: Yeah.

6 **REDIRECT EXAMINATION**

7 Q. BY MR. MITCHELL: Mr. Brooks asked you some questions
8 regarding the Board Agent saying that you should have
9 objected, and you stated that you thought you had objected.
10 What did you say -- do you recall what you said to the Board
11 Agent that would make you believe that you had objected to
12 the Board Agent's time at the pre-election conference the
13 first thing in the morning?

14 MR. BROOKS: Objection. Argument. He's already
15 testified to what he said. The witness' belief as to whether
16 he objected or not is irrelevant in this case, and your
17 conclusion as to whether there was an objection. What's that
18 mean anyway?

19 HEARING OFFICER SUTCLIFF: I'll sustain.

20 MR. BROOKS: Okay.

21 Q. BY MR. MITCHELL: Testify as to what you said in the
22 morning session that was considered an objection?

23 MR. MITCHELL: He testified earlier that it was an
24 objection. He testified that it --

25 MR. BROOKS: The witness has asked and answered.

1 MR. MITCHELL: No, it's not. He can answer the
2 question. I have right to follow up on your questions.

3 MR. BROOKS: Well, it's --

4 HEARING OFFICER SUTCLIFF: The question that you're
5 asking --

6 MR. MITCHELL: Yes.

7 HEARING OFFICER SUTCLIFF: -- is?

8 MR. MITCHELL: What did you say in the morning session
9 or the morning pre-election conference to object to the time
10 on her watch being fast?

11 HEARING OFFICER SUTCLIFF: And your objection is what?

12 MR. BROOKS: Asked and answered. He already testified
13 to that.

14 HEARING OFFICER SUTCLIFF: Sustained. He did.

15 MR. MITCHELL: He did, but he asked a follow-up question
16 insinuating that he had not objected, and I just wanted him
17 to have the opportunity to explain what he said to object.

18 MR. BROOKS: He testified --

19 MR. MITCHELL: Let me finish up, sir. You are
20 interrupting, too. All I'm saying is he asked a question
21 that raised an issue as to whether or not Mike objected,
22 okay, in the pre-election conference, and I just wanted to
23 give him an opportunity to clarify that.

24 HEARING OFFICER SUTCLIFF: I think the record is clear.
25 I think he -- I've sustained the objection. He did testify

1 to what he stated. I think it only causes to potentially
2 confuse further testimony.

3 MR. MITCHELL: Okay. I don't have any other questions.

4 HEARING OFFICER SUTCLIFF: Okay.

5 MR. BROOKS: Nothing further.

6 HEARING OFFICER SUTCLIFF: All right. I have got a
7 couple. I want to know more about the motorcycle accident.
8 Do you recall how many employees called in and who they --

9 THE WITNESS: No, I was just there with the management
10 team. They've got cell phone with little walkie-talkie
11 things hooked into them. So I was there in the room when
12 they were getting reports and calls from people who were
13 going to be late or slow, and people were slow leaving, and
14 the trucks couldn't get out unless they -- the people that
15 were there before the accident couldn't get out as quickly as
16 they would normally get out, and people who were on the way
17 in could not get in. They come in at sort of a -- over a
18 period of time, the way I understand it.

19 HEARING OFFICER SUTCLIFF: Did you have any
20 conversations, any direct conversations with any employees
21 who indicated to you they had been stuck in traffic?

22 THE WITNESS: No, ma'am.

23 HEARING OFFICER SUTCLIFF: So we've talked about the
24 time clock and where it is. Are there any other timepieces
25 in this bay area from your observation of that facility?

1 THE WITNESS: Yeah, right beside that time, the old time
2 clock was right there.

3 HEARING OFFICER SUTCLIFF: What time on that time clock
4 did you see?

5 THE WITNESS: I cannot observe what that is.

6 HEARING OFFICER SUTCLIFF: Not in the picture, on the
7 day of?

8 THE WITNESS: No, no, because -- no, I did not. I
9 didn't realize that that was a time clock until later.

10 HEARING OFFICER SUTCLIFF: How about any other
11 timepieces in that bay area that you're aware of?

12 THE WITNESS: Not that I'm aware of, no, ma'am.

13 HEARING OFFICER SUTCLIFF: Okay.

14 THE WITNESS: There was one in the break room.

15 HEARING OFFICER SUTCLIFF: Did you notice what time it
16 was in the break room.

17 THE WITNESS: No, I just know they have one in the break
18 room. It's just one of those that hangs on the wall.

19 HEARING OFFICER SUTCLIFF: Any other questions?

20 MR. BROOKS: Yes.

21 **RECROSS-EXAMINATION**

22 Q. BY MR. BROOKS: Did the company ask that the election
23 time in the morning session be extended due to the motorcycle
24 accident?

25 A. It had already started.

1 Q. Sir, my questions is, did the company ask the election
2 time in the morning be extended due to the motorcycle
3 accident?

4 A. No.

5 Q. And how is the time on the old time clock set?

6 A. I have no idea.

7 MR. BROOKS: Nothing further.

8 HEARING OFFICER SUTCLIFF: Okay. You're excused. Thank
9 you. Subject to recall.

10 **(Witness excused.)**

11 **All right. Let's go off the record.**

12 **(Off the record.)**

13 **HEARING OFFICER SUTCLIFF: On the record.**

14 Mr. Mitchell, your next witness, please.

15 MR. MITCHELL: Earl McConnell.

16 HEARING OFFICER SUTCLIFF: Okay. Mr. McConnell, please
17 raise your right hand.

18 (Whereupon,

19 **EARL McCONNELL**

20 was called as a witness by and on behalf of the Employer and,
21 having been first duly sworn, was examined and testified as
22 follows:)

23 HEARING OFFICER SUTCLIFF: Okay. State your name and
24 spell it for the record.

25 THE WITNESS: Earl McConnell, McConnell,

1 M c C O N N E L L.

2 HEARING OFFICER SUTCLIFF: Okay.

3 **DIRECT EXAMINATION**

4 Q. BY MR. MITCHELL: Earl, can you explain what your job is
5 and where you're located?

6 A. I'm located out of the Atlanta Branch, Smyrna. My job
7 is the district manager for Georgia and Tennessee.

8 Q. And you work for?

9 A. Garda Cash Logistics.

10 Q. Did the Smyrna facility have a representation election
11 on July 21, 2010?

12 A. Yes.

13 Q. Were you present as a representative for Garda at the
14 pre-election, post-election conferences on Wednesday, July
15 21, 2010.

16 A. Yes.

17 Q. Were there any other individuals at the conference on
18 behalf of Garda?

19 A. Yes, Fred Greaves --

20 Q. Who's Fred?

21 A. The branch manager.

22 Q. Okay. Who else?

23 A. And Mike.

24 Q. Carrouth?

25 A. Carrouth.

- 1 Q. And was there a company observer there as well?
- 2 A. Yes.
- 3 Q. What was her name?
- 4 A. Charetta Robinson.
- 5 Q. And was there a Board Agent there?
- 6 A. Yes.
- 7 Q. Do you recall her name?
- 8 A. No.
- 9 Q. Okay. Do you recall her describing her background when
- 10 she came into the pre-election conference?
- 11 A. Yes. She was a lawyer.
- 12 Q. Did the Board Agent lead a discussion during the pre-
- 13 election conference with the observers and the other people
- 14 in the room?
- 15 A. Yes.
- 16 Q. Did she put together a voting booth?
- 17 A. Yes, she did.
- 18 Q. Put together a ballot box?
- 19 A. Yes.
- 20 Q. Did the Board Agent ever ask the people in the room to
- 21 confirm the time?
- 22 A. Yes, she did.
- 23 Q. And do you recall what time she said was on her watch?
- 24 A. 5:20.
- 25 Q. Okay. And do you remember what the time was on your

1 watch?

2 A. My watch was 5:16.

3 Q. And so it was four minutes faster?

4 A. Correct.

5 Q. Do you know if the time on the Board Agent's watch was
6 faster than the time in Fred's and Mike's watch?

7 A. Yes, it was.

8 Q. How do you know that?

9 A. Because their watch was 5 minutes fast or 5 minutes
10 slower than her time.

11 Q. Hers was 5 minutes fast?

12 A. Yeah.

13 Q. How do you know that?

14 A. Because they looked at their watches and compared the
15 time.

16 Q. Do you have any knowledge whether or not the Board
17 Agent's watch was faster than the time clock used at the
18 facility?

19 A. (No response.)

20 Q. Do you believe that the Board Agent's watch was faster
21 than the time clock?

22 A. Yes.

23 Q. Okay. How do you know that?

24 A. It wasn't matching the time clock. When we looked at
25 our watching, the time clock said one thing and her watch

1 said another thing.

2 Q. How do you know what the time clock said?

3 A. That's the timepiece we use at the branch.

4 Q. And how did you know at that time based on your watch?

5 A. Because I know my watch and the time clock's, mines a
6 minute faster than the time clock.

7 Q. Okay. And you've got -- what kind of watch did you have
8 on?

9 A. A digital.

10 Q. Did anybody tell the Board Agent that her watch was
11 fast?

12 A. Yes.

13 Q. Who did that?

14 A. Mike Carrouth.

15 Q. Do you recall what he said?

16 A. He just pretty much said, he looked at his watch and he
17 said I think we have a discrepancy.

18 Q. What did he say, if you recall?

19 A. I can't recall, but I know they were going back and
20 forth with it.

21 Q. Who's they?

22 A. Mike and the Board Agent, the time difference.

23 Q. Did the Board Agent agree with Mike's point?

24 A. No, she said her watch was the office timepiece.

25 Q. Did Mike explain why he was concerned that the watch was

1 fast?

2 A. Yes.

3 Q. What did he say?

4 A. He just mentioned that if it doesn't match what the
5 employees know what the time it, it might cause a
6 discrepancy.

7 Q. Okay. What happened after that?

8 A. Pretty much after they finished putting everything
9 together, we walked out and went up to the front.

10 Q. Okay. And who went up to the front?

11 A. Myself, Mike and Fred.

12 Q. Did you learn that there was an accident near the
13 facility that day?

14 A. Yes.

15 Q. About what time?

16 A. It was about 7:30.

17 Q. And how did you learn about that?

18 A. The branch manager, Fred Greaves mentioned we have a
19 fatality right out half a mile from the branch. The
20 employees come in late and the trucks were leaving late,
21 couldn't get out.

22 Q. Okay. Explain that. How did you know employees were
23 being late?

24 A. Well, they did radio in and say, hey, you know, we're
25 stuck in this traffic jam, and that's how Fred found out and

1 he let me know.

2 Q. Do you have any idea how many employees called in or
3 radioed in?

4 A. No.

5 Q. More than one?

6 A. I'm sure.

7 MR. BROOKS: Objection.

8 HEARING OFFICER SUTCLIFF: Sustained. Was it more than
9 one or not?

10 THE WITNESS: I'm not sure.

11 MR. MITCHELL: He said I'm not sure. The testimony just
12 was or we can read it back.

13 HEARING OFFICER SUTCLIFF: He said he's not sure.

14 MR. MITCHELL: Okay.

15 Q. BY MR. MITCHELL: I believe you testified earlier that
16 the voting period was from 5:30 to 8:30, correct?

17 A. Correct.

18 Q. Okay. Did you have any input in establishing a three-
19 hour voting period?

20 A. Yes, I --

21 Q. And why did you want the three-hour voting period?

22 A. We're on a customer-based service and our routes start
23 anywhere from 5:00 until 8:30, give or take. So we wanted to
24 make sure everybody had the opportunity to vote.

25 Q. So why from -- so when you say scheduled to start, I'm

1 not following you a little. Does some people come in at
2 5:30?

3 A. Yes, some routes can leave anywhere from 5:15, 5:30,
4 5:45 each day.

5 Q. And what are the latest routes that leave in the
6 morning?

7 A. At that branch, it's 8:30. Our last route leaves at
8 8:30.

9 Q. What time are the people that leave at 8:30 supposed to
10 come in?

11 A. Ten to fifteen minutes earlier than your route starts.

12 Q. Did you go back to the voting area after the morning
13 voting period?

14 A. Yes, I did.

15 Q. And do you recall what time you arrived in the bay?

16 A. Probably about 8:32.

17 Q. And how do you know that?

18 A. Because myself and Mike, we started walking back around
19 8:30, and we kind of moseyed our way back. Probably about
20 8:32.

21 Q. Did you check your watch?

22 A. No.

23 Q. When you got to the door of the bay, did you see the
24 election notice across the bay outside of the hall leading to
25 the break room?

1 A. No.

2 Q. Had you seen it before you left?

3 A. Yes.

4 Q. Okay. So who was with you when you walked into the
5 voting area?

6 A. Myself, Mike Carrouth and Fred Greaves.

7 Q. Did the Board agent say anything to you as you walked
8 in?

9 A. She said she had a couple employees that tried to come
10 in and vote.

11 Q. And what did she say?

12 A. And then she said she didn't let them vote unless they
13 had to vote or whatever the term they use, subject to
14 something.

15 Q. Challenge?

16 A. Yeah.

17 Q. And what did Mike say, if anything?

18 A. He mentioned something about the watch or the time,
19 that's why, the time wasn't set to his or her time wasn't
20 comparable.

21 Q. Okay. Do you recall if the Board Agent said anything to
22 Mike when he raised that issue?

23 A. No.

24 HEARING OFFICER SUTCLIFF: No, you don't recall or no --

25 THE WITNESS: No, I wasn't close enough. I don't think

1 I was close enough if they said something or not.

2 Q. BY MR. MITCHELL: Did you attend the pre-election
3 conference for the second voting period at 3:30 p.m.?

4 A. Yes.

5 Q. And did you go to the voting area?

6 A. Yes.

7 Q. Was the Board Agent already there?

8 A. No, she wasn't.

9 Q. Do you recall her arriving in the voting area?

10 A. Yes.

11 Q. Did she say anything about her watch?

12 A. She made the comment or made the comment to Mike, I was
13 behind, that she fixed her watch towards the time clock.

14 Q. Were you there for the vote count?

15 A. Yes.

16 Q. Who won?

17 A. The Union did.

18 Q. Do you recall how many people did not vote?

19 MR. BROOKS: Objection. This is all in the record.

20 MR. MITCHELL: I'm going to ask him a question after
21 this, just one question, follow-up question and then --

22 HEARING OFFICER SUTCLIFF: I'll overrule the objection.

23 Q. BY MR. MITCHELL: Were you surprised that 20 people
24 didn't vote?

25 MR. BROOKS: Objection. --

1 HEARING OFFICER SUTCLIFF: Sustained.

2 Q. BY MR. MITCHELL: Did you communicate with the employees
3 and tell them the appropriate time to vote during the
4 election, during the campaign?

5 A. Yes.

6 Q. How many times did you tell them when to vote?

7 A. Probably 10 times.

8 Q. And did you tell them the times the voting period would
9 be open?

10 A. Yes.

11 MR. MITCHELL: Okay. Can you give me a second, please?

12 **HEARING OFFICER SUTCLIFF: Yes. Off the record.**

13 **(Off the record.)**

14 **HEARING OFFICER SUTCLIFF: On the record.**

15 Q. BY MR. MITCHELL: You testified that you're the district
16 manager. Is that correct?

17 A. That's correct.

18 Q. Do you have any interaction with the payroll department
19 based on your job, as a result of your job?

20 A. Yes.

21 Q. Are you familiar with the Exhibit 2 in front of you?

22 A. Yes.

23 Q. What do you see in Exhibit 2?

24 A. This is pretty much the front, you know, to the right we
25 have Fred's office, to the left, we have a vault. The

1 employees also have like a little bulletin board, too.

2 Q. What's in the middle of the picture?

3 A. The time clock.

4 Q. Okay. Is that the time -- the one in the middle, the
5 larger time clock, the one that employees were using at that
6 time?

7 A. Yes.

8 Q. Okay. Is there a time clock to the right?

9 A. Yes, there is.

10 Q. Okay. Were employees required to use that during the
11 time of the vote?

12 A. No.

13 Q. Do you know if there was a switch of time clocks
14 somewhat in the summer of 2010?

15 A. Yes.

16 Q. Do you recall when the time clocks were switched?

17 A. I believe this branch was around the 13th of June. We
18 were going from one time period to another time period.

19 Q. So by the 21st, were people -- did they know to use the
20 time clock in the middle?

21 A. Correct. Yes.

22 Q. Does the time clock in the middle have the time --
23 obviously it has the time of day on it, correct?

24 A. Correct.

25 Q. And do you have any knowledge as to where that time

1 clock gets the time? Do you have any knowledge of that?

2 A. Yes.

3 Q. All right. And how do you have knowledge of that?

4 A. I sent an e-mail to our payroll manager and asked him
5 where the time came from, how it was set.

6 **(Employer's Exhibit 3 marked for identification.)**

7 Q. BY MR. MITCHELL: I'd ask you to identify this document
8 in front of you. I have it marked as Exhibit 3.

9 A. Yes.

10 Q. What is it?

11 A. It was a message that came back from Leo Nasvejas.

12 Q. Who is Leo Nasvejas?

13 A. He's our payroll manager.

14 Q. Is this the person you said you e-mailed?

15 A. That's correct. Actually he called.

16 Q. He called. And is that the telephone conversation that
17 we had together?

18 A. That is correct, uh-huh.

19 Q. And he was on speaker -- was he on a regular phone or
20 speakerphone?

21 A. Speakerphone.

22 Q. Based on this e-mail, what did you learn about ADP's,
23 the time clock?

24 MR. BROOKS: Objection. The document speaks for itself.

25 HEARING OFFICER SUTCLIFF: Sustained.

1 MR. MITCHELL: That's fine.

2 MR. BROOKS: Are you moving --

3 MR. MITCHELL: Yeah, I'd like to move to enter it into
4 evidence.

5 HEARING OFFICER SUTCLIFF: Any objection?

6 MR. BROOKS: I object.

7 HEARING OFFICER SUTCLIFF: What's the basis of the
8 objection?

9 MR. BROOKS: It's not from ADP. It's just hearsay
10 testimony that someone at the company says that they
11 understand from ADP. It doesn't establish anything. I mean
12 the company internally has a position with respect to this.

13 HEARING OFFICER SUTCLIFF: Okay. I'm going to reserve
14 ruling on this. I want to think about this. It's been
15 offered. I have it. I haven't decided what to do with it
16 yet. So any further questions for this witness?

17 MR. MITCHELL: No.

18 HEARING OFFICER SUTCLIFF: Okay.

19 MR. BROOKS: Do you have the statement, please?

20 HEARING OFFICER SUTCLIFF: Are you ready?

21 MR. BROOKS: Yes.

22 **CROSS-EXAMINATION**

23 Q. BY MR. BROOKS: Mr. McConnell, the employee swipe in --

24 A. I'm sorry.

25 Q. When an employee comes to work, do they register the

1 time they get to work in some fashion?

2 A. Yes.

3 Q. How?

4 A. They go up to the time clock and they punch in their
5 personal identification code.

6 Q. Okay. And the time clock you're talking about at least
7 as of the date of the election was the center time clock in
8 Exhibit 2, correct?

9 A. Correct, the big one.

10 Q. Okay. And that's just steps away from the voting area?

11 A. That's correct.

12 Q. So anyone who wanted to that day, could punch in and
13 just walk right around the corner and vote?

14 A. Probably about, yeah, about 10 feet I guess from the
15 time clock to the door.

16 Q. And that entry of their time coming to the facility
17 creates a record of when they actually arrived. Is that
18 right?

19 A. Correct.

20 Q. So rather than guess whether people showed up late
21 because of an accident, the Employer would have records as to
22 exactly what time each came in. Is that right?

23 A. It could be yes or no. The reason why. If the employee
24 came in right away, maybe went to the restroom or they came
25 in right away and went to the time clock.

1 Q. But at least the Employer would have records of when
2 each employee that day punched in or swiped in or whatever?

3 A. When they first swipe into the time clock, correct.

4 Q. Okay. So we wouldn't have to guess as to whether anyone
5 was late that day?

6 A. No.

7 Q. And we wouldn't have to guess as to what time they
8 actually showed up, at least when they punched in?

9 A. At least when they punched in, that is correct.

10 Q. A few feet of the voting area.

11 A. Correct.

12 Q. And as I understand it, the accident caused a delay in
13 trucks leaving the facility. Is that right?

14 A. That's correct.

15 Q. So those employees who were there who were delayed had
16 even extra time in which to vote?

17 A. Not if they're stuck in the truck.

18 Q. They're stuck there. So they can go vote.

19 A. No, because they get in their truck and they go out the
20 door.

21 Q. But it's blocked because of the accident. They can't go
22 out the door. So --

23 A. They still go out the door and they were waiting in
24 line.

25 Q. Oh, they were waiting in line?

1 A. Yeah.

2 Q. Okay.

3 A. You know, once you -- you still have to get them out.
4 So once they leave and get out, they're on that side street
5 waiting.

6 Q. Fair enough. Now the polls were open three hours in the
7 morning session, correct?

8 MR. MITCHELL: Objection. He has no basis or knowledge
9 of that. He doesn't know how long they were open.

10 MR. BROOKS: He doesn't know if the polls were open
11 three hours?

12 HEARING OFFICER SUTCLIFF: All right. Well --

13 MR. MITCHELL: He wasn't in the room at the time.

14 HEARING OFFICER SUTCLIFF: Well, let's --

15 MR. BROOKS: Didn't he testify --

16 HEARING OFFICER SUTCLIFF: Well, actually I'm going to
17 overrule because he was -- first of all, let's back up a
18 little bit. Did you have an occasion to see -- are you aware
19 of the voting times in the morning?

20 THE WITNESS: That is correct, yes.

21 HEARING OFFICER SUTCLIFF: Okay. And what is the basis
22 for you knowing when the voting session was?

23 THE WITNESS: I was one of the ones that decided the
24 voting time.

25 HEARING OFFICER SUTCLIFF: Okay. So he's requested to

1 know at least what the times. So the question you asked
2 was --

3 Q. BY MR. BROOKS: What time did the polls open?

4 A. 5:30.

5 Q. According to who's watch?

6 MR. MITCHELL: Objection.

7 HEARING OFFICER SUTCLIFF: What's the basis?

8 MR. MITCHELL: The basis of the objection is he doesn't
9 know what the Agent's watch was. He wasn't in there when she
10 said it's open. He wasn't in there when she said it's
11 closed.

12 HEARING OFFICER SUTCLIFF: I sustain the objection. I
13 understand now what you're basing it on. Go ahead.

14 Q. BY MR. BROOKS: Do employees wear watches?

15 A. I can't answer that. I don't know every employee.

16 Q. Do you know whether any employees wear watches?

17 MR. MITCHELL: Objection. I think he answered the
18 question.

19 HEARING OFFICER SUTCLIFF: Okay. Well, have you -- all
20 right. How about this? Have you observed employees wearing
21 timepieces?

22 THE WITNESS: Yes.

23 HEARING OFFICER SUTCLIFF: Okay. Have you had occasion
24 to have conversations with those employees about their
25 timepieces?

1 THE WITNESS: Yes.

2 HEARING OFFICER SUTCLIFF: Okay. And can you give me an
3 example of the time where you've talked to someone about
4 their timepiece?

5 THE WITNESS: Actually I can't.

6 HEARING OFFICER SUTCLIFF: Okay. Go ahead.

7 Q. BY MR. BROOKS: Does the company have a rule that
8 requires employees to coordinate their watches or set their
9 watches according to the time clock?

10 A. I'm not sure. No, there's no policy on something like
11 that.

12 Q. And does the company have a rule or written policy that
13 says that the time clock time is the "official" time?

14 A. Not to my understanding.

15 Q. Are there clocks within the facility?

16 A. I believe there's one in Fred's office and there's
17 probably one in the vault.

18 Q. I understand there's one in the break room. Is that
19 right?

20 A. I don't know.

21 Q. You don't know. Are those clocks coordinated to the
22 time clock?

23 A. I don't know that either.

24 HEARING OFFICER SUTCLIFF: Are there any clocks in the
25 bay?

1 THE WITNESS: No, I don't think so. I don't believe
2 there are.

3 HEARING OFFICER SUTCLIFF: All right. Go ahead.

4 Q. BY MR. BROOKS: The bay is how large?

5 A. Our bay can probably fit about 20 trucks. I don't know
6 the dimensions.

7 Q. Okay. How large are the digits on the new time clock on
8 the display?

9 A. I'd say half, quarter inch maybe. I'm not sure. I
10 don't use the time clock every day. So I really don't look
11 at it every day like that.

12 Q. Didn't you testify that you set your watch by the time
13 clock?

14 A. Yes.

15 Q. Well, then you must look at the time clock?

16 A. I don't know the size, maybe the clock size, maybe 14,
17 16, I can give you that.

18 Q. So you can't see it from very far away?

19 A. No, I can't. I'm blind.

20 Q. So all the employees are in the bay area --

21 A. Uh-huh.

22 Q. -- spread out among the various trucks --

23 A. Uh-huh.

24 Q. -- doing their business. They can't see the time clock
25 from their position. Is that right?

1 A. It depends where they're standing, correct.

2 Q. So if they want to know what the time is they either
3 look at their watch or they have to physically walk right up
4 next to the time clock. Is that right?

5 A. Well, it depends if they can see it. I can't see it.

6 Q. Okay. Do you have Exhibit 2 before you?

7 A. Yes, uh-huh.

8 Q. And this is a photograph of the time clock?

9 A. That's correct.

10 Q. And the screen on the time clock is such that you can't
11 even see in this photograph that there's anything displayed
12 on that time clock. Is that correct?

13 A. Correct.

14 Q. Is it your testimony though that there is something
15 displayed on that time clock?

16 A. I can't really say that. I don't know if the screen
17 goes blank or not.

18 Q. So sometimes the time clock screen may be blank --

19 A. I don't know.

20 Q. -- and not display the time?

21 MR. MITCHELL: Objection. He didn't testify that it is.
22 He said it depends --

23 MR. BROOKS: Fine. I withdraw the question.

24 Q. BY MR. BROOKS: Now, there are various documents on the
25 bulletin board that are displayed on Exhibit 2.

1 A. Correct.

2 Q. You can see that there's some printing on those
3 documents, correct?

4 A. Yes, I can see that.

5 Q. And there's the old time clock in Exhibit 2. Is that
6 right?

7 A. That's right.

8 Q. And you can see that there's a display on that old time
9 clock, right? It's a little blurry, but you can see there's
10 some digits that are in black on the lighter screen.

11 A. Correct.

12 Q. Okay. That time clock wasn't in use?

13 A. I'm sorry.

14 Q. That time clock wasn't in use?

15 A. No.

16 Q. Was the time on that time clock verified?

17 A. I didn't verify it.

18 HEARING OFFICER SUTCLIFF: And when we say verified,
19 we're talking about on the day of the election?

20 THE WITNESS: Right. Yes.

21 MR. BROOKS: No, actually, what I meant -- let me
22 rephrase that.

23 HEARING OFFICER SUTCLIFF: Okay. Thank you.

24 Q. BY MR. BROOKS: Was it verified through some sort of
25 system, ADP or anyone else that that time on the old time

1 clock was accurate?

2 A. I didn't verify it.

3 HEARING OFFICER SUTCLIFF: So then I'll ask. When you
4 had occasion -- let me back up. You testified that you
5 synchronize your watch to the big time clock, correct?

6 THE WITNESS: Uh-huh.

7 HEARING OFFICER SUTCLIFF: Okay. Now, the time clock
8 that's next to it, on the day of the election, did you have
9 occasion to look at that particular time clock?

10 THE WITNESS: No. I mean I guess I had, but I paid
11 attention to the bigger time clock more than anything.

12 HEARING OFFICER SUTCLIFF: Okay. Have you had an
13 occasion to compare the time on the big time clock to the
14 little time clock next to it?

15 THE WITNESS: No.

16 HEARING OFFICER SUTCLIFF: Okay. Go ahead.

17 MR. BROOKS: Nothing further.

18 MR. MITCHELL: A quick question.

19 HEARING OFFICER SUTCLIFF: Go ahead.

20 **REDIRECT EXAMINATION**

21 Q. BY MR. MITCHELL: If people are late, are they
22 disciplined? Can they be disciplined?

23 A. Yes, they can.

24 Q. Can that affect their income?

25 A. Yes, it can.

1 Q. If somebody is late by the time clock, are they
2 considered late?

3 A. Yes, they are

4 Q. What if their watch is different? Do you look at their
5 watch?

6 A. No.

7 Q. Okay. So if somebody wants to make sure they're on
8 time, they go by the time clock, correct?

9 A. That's correct.

10 MR. MITCHELL: All right. That's all.

11 HEARING OFFICER SUTCLIFF: Anything further?

12 MR. BROOKS: No, ma'am.

13 **HEARING OFFICER SUTCLIFF: Let's go off the record for a**
14 **minute.**

15 **(Off the record.)**

16 **HEARING OFFICER SUTCLIFF: Back on the record.**

17 You mentioned that you had spoke with the employees I
18 think you said about 10 times.

19 THE WITNESS: Correct.

20 HEARING OFFICER SUTCLIFF: Did you in any of those
21 conversations, in any of those 10 or so conversations with
22 the employees, did you reference the time clock in any way in
23 your speeches?

24 THE WITNESS: No.

25 HEARING OFFICER SUTCLIFF: Did you in any way indicate

1 that the time for the election would be set by the time
2 clock?

3 THE WITNESS: No.

4 HEARING OFFICER SUTCLIFF: Thank you. Anything further?

5 MR. MITCHELL: No.

6 HEARING OFFICER SUTCLIFF: Anything further?

7 MR. BROOKS: Briefly.

8 HEARING OFFICER SUTCLIFF: Go ahead.

9 **RECROSS-EXAMINATION**

10 Q. BY MR. BROOKS: Were official NLRB notices of the
11 election posted?

12 A. Yes. Yes.

13 Q. And did those notices state the time of the election?

14 A. Yes.

15 Q. The morning session was 5:30 a.m. to 8:30 a.m.

16 A. That's correct.

17 Q. And did they state that that time was be calculated by
18 the Employer's time clock?

19 A. I don't remember reading that. Sorry.

20 MR. BROOKS: Nothing further.

21 HEARING OFFICER SUTCLIFF: Okay. You are excused.

22 Thank you.

23 **(Witness excused.)**

24 HEARING OFFICER SUTCLIFF: Mr. Mitchell, any other
25 witnesses?

1 MR. MITCHELL: Yes.

2 HEARING OFFICER SUTCLIFF: Okay.

3 MR. MITCHELL: We call Fred Greaves.

4 HEARING OFFICER SUTCLIFF: Okay.

5 MR. MITCHELL: If I can slip out and get him.

6 **HEARING OFFICER SUTCLIFF: Yes. Let's go off the**
7 **record.**

8 **(Off the record.)**

9 **HEARING OFFICER SUTCLIFF: Back on the record.**

10 Mr. Mitchell, you can call Fred Greaves.

11 MR. MITCHELL: Call Fred Greaves.

12 HEARING OFFICER SUTCLIFF: Thank you. Mr. Greaves,
13 please raise your right hand.

14 (Whereupon,

15 **FREDERICK GREAVES**

16 was called as a witness by and on behalf of the Employer and,
17 having been first duly sworn, was examined and testified as
18 follows:)

19 HEARING OFFICER SUTCLIFF: Okay. Please be seated.
20 State your name and spell it for the record.

21 THE WITNESS: Frederick Greaves, G R E A V E S.

22 HEARING OFFICER SUTCLIFF: Go ahead.

23 MR. MITCHELL: Okay.

24 **DIRECT EXAMINATION**

25 Q. BY MR. MITCHELL: Mr. Greaves, what was your job at

1 Garda?

2 A. I'm the branch manager of the Smyrna Branch.

3 Q. The Smyrna Branch?

4 A. Yes.

5 Q. And did the facility have a representation election on
6 July 21, 2010?

7 A. It did.

8 Q. Did you participate in the pre-election conference that
9 started at approximately 5:00 a.m.?

10 A. I did.

11 Q. And do you recall what time the vote started?

12 A. It was supposed to start at 5:30.

13 Q. Okay. How long did it last?

14 A. Until 8:30.

15 Q. Did you participate in a pre-election conference?

16 A. I did.

17 Q. And was Mike Carrouth there?

18 A. Yes.

19 Q. Okay. And what about Earl McConnell? Was he there?

20 A. Yes.

21 Q. Was the Board Agent there?

22 A. Yes.

23 Q. And was there an assistant to the Board Agent there?

24 A. Yes.

25 Q. Did the company have an observer?

- 1 A. Yes.
- 2 Q. What was her name?
- 3 A. Charetta Robinson.
- 4 Q. Did the Union have an observer?
- 5 A. Yes.
- 6 Q. And what was her name?
- 7 A. Thometra Marks.
- 8 Q. Did the Board Agent lead a discussion during the pre-
- 9 election conference while she was putting together the voting
- 10 booth?
- 11 A. Yes.
- 12 Q. Did she put together the ballot box as well?
- 13 A. Yes, she did.
- 14 Q. And during the meeting or after she put together the
- 15 ballot box, did she ask everyone to confirm the time?
- 16 A. Yes.
- 17 Q. Did she state the time that was on her watch?
- 18 A. She did.
- 19 Q. What time was that?
- 20 A. 5:20.
- 21 Q. And do you recall if her watch was faster or slower than
- 22 your watch?
- 23 A. It was faster.
- 24 Q. Okay. What time was on your watch?
- 25 A. 5:15.

1 Q. Okay. Did you check your watch?

2 A. I did.

3 Q. Did anybody raise the issue regarding the Board Agent's
4 watch being fast to the Board Agent during that first pre-
5 election conference?

6 A. Yes, Mike did.

7 Q. And do you recall what Mike said?

8 A. Mike said that, you know, her watch was fast according
9 to everybody else's. Everybody else had checked their
10 watches, and he wanted to bring up that that wasn't the
11 correct time.

12 Q. Okay. Do you set your watch by any other clock in the
13 facility.

14 A. I set my watch to the time clock.

15 Q. Why do you set it to the time clock?

16 A. Because I need to know what time my employees are
17 showing up for work, whether they're showing up late, showing
18 up early.

19 Q. Are there any other clocks out in the bay area that
20 employees can look at?

21 A. No.

22 Q. Would you take a look at Exhibit 2 there. Do you see
23 that?

24 A. Yes.

25 Q. Do you see the large box in the middle?

1 A. Yes.

2 Q. What is that?

3 A. That is the current time clock we are using at the
4 branch.

5 Q. Was that the time clock you were using during the
6 election?

7 A. Yes.

8 Q. Do you see a time clock to the right of that?

9 A. I do.

10 Q. To the right on the picture, okay, so facing it. Was
11 that time clock being used on July 21, 2010?

12 A. It was not.

13 Q. Okay. Did you have anything to do with switching the
14 use of the time clock from the old time clock to new time
15 clock?

16 A. I don't understand the question.

17 Q. Yeah, that's a bad question. Did you participate in
18 notifying the employees that they would begin using the new
19 clock?

20 A. I did.

21 Q. Okay. And do you recall when you did that?

22 A. It was approximately two weeks prior to us going to the
23 new time clock.

24 Q. So do you remember what month it was?

25 A. It was June.

1 Q. Okay. Do you remember about when in June it was?

2 A. I put out a memorandum to all the employees in their
3 mailbox and also posted above the new time clock, that we
4 would be starting it on June 20th. However, we did actually
5 start it on June 13th.

6 Q. Okay. Did anybody express any confusion to you in July
7 as to which time clock was relevant?

8 A. No.

9 MR. BROOKS: Objection. Relevance.

10 HEARING OFFICER SUTCLIFF: I'm sorry. Ask the question
11 again.

12 MR. MITCHELL: I said did anybody express any confusion
13 to you about which time clock they were supposed to use at
14 the time of the election?

15 HEARING OFFICER SUTCLIFF: The basis of your objection?

16 MR. BROOKS: What does it matter what time clock they're
17 supposed to use.

18 HEARING OFFICER SUTCLIFF: I'm going to overrule. I
19 think that's relevant. Go ahead.

20 Q. BY MR. MITCHELL: Do you want me to ask the question
21 again?

22 A. Yes, please.

23 Q. Did anybody express any confusion about which time clock
24 they were supposed to use on July 21, 2010?

25 A. No.

1 Q. Okay. Back to the voting pre-election conference. You
2 testified earlier that Mike raised an issue with the
3 difference in the Board Agent's watch and his watch. Did he
4 raise the issue -- did he say anything about the time clock?

5 A. I believe he said he had stopped on his way to the pre-
6 election conference and stated that he checked his watch
7 along with the time clock's.

8 Q. Did the Board Agent go and check the time clock to see
9 if her watch was the same?

10 A. No.

11 Q. What did she say in response to Mike?

12 A. That her timepiece was the official timepiece and that's
13 what we were using.

14 Q. Okay. What happened after that discussion?

15 A. Mike got upset, she got upset, I mean it was words back
16 and forth between the two of them and, you know, she said
17 that was it. Hers was being used and it was done.

18 HEARING OFFICER SUTCLIFF: What were the words?

19 THE WITNESS: I don't recollect right offhand.

20 HEARING OFFICER SUTCLIFF: Go ahead.

21 Q. BY MR. MITCHELL: Where did you go after you left that
22 voting area?

23 A. I went back to my office and Mike and Earl went back up
24 front to the offices.

25 Q. Did you ever learn that there was an accident that took

1 outside the facility during the voting period?

2 A. Yes, there was an accident.

3 Q. Okay. When did you learn about that?

4 A. Around 7:30, somewhere in that timeframe.

5 Q. How did you learn about it?

6 A. My supervisor came to me and told me employees were
7 having a hard time getting into work because of the accident.

8 Q. Do you know if the accident delayed the employees'
9 ability to come in and leave?

10 A. Yes.

11 Q. And how do you know that?

12 A. Because the routes were calling in saying they were
13 having a hard time leaving our branch and the trucks were
14 back up for, you know, at least a mile, just trying to get
15 out, and they had both lanes blocked on that road for people
16 coming in.

17 Q. When an employee comes into work, what do they do before
18 they leave on their truck if anything?

19 A. They normally get their stuff together and go in and
20 they buy their load.

21 Q. What does that mean?

22 A. They go in there and they -- I don't know how to explain
23 it. They go into a booth, they buy the stuff that they're
24 going to take out to the customers that day, meaning they're
25 going to sign for bags of currency or any type of liability

1 they might be taking out on the truck for that day.

2 Q. Okay. So they have set duties that they're supposed to
3 do before they leave?

4 A. That is correct.

5 Q. If they come in late, are they still supposed to try to
6 leave at the appropriate time?

7 A. Yes.

8 Q. So if they come in late, does it put them behind in
9 terms of trying to get out at the right time?

10 A. Yes.

11 Q. Did you attend the closing conference for the first
12 voting session?

13 A. I did.

14 Q. And do you remember, did you walk with anybody to go
15 into the voting area?

16 A. I escorted the Agent into the voting area.

17 Q. No, no, I'm talking about when you went back in after
18 the first voting period.

19 A. Okay. All right.

20 Q. Did you go into the voting area after the first vote?

21 A. Yes.

22 Q. Okay. You did. Do you remember what time -- where were
23 you at the end of the first voting period?

24 A. Me, Mike, and Earl were up in the front offices.

25 Q. Okay. Do you recall what time you arrived at the voting

1 area?

2 A. It was around 8:32, somewhere, 8:33, somewhere in that
3 timeframe.

4 Q. Did you check your watch?

5 A. I don't believe I did.

6 Q. Okay.

7 HEARING OFFICER SUTCLIFF: How do you know it was 8:32
8 or 8:33?

9 THE WITNESS: Well, we left the offices about 8:30. It
10 takes a couple of minutes to get back into the bay area.

11 HEARING OFFICER SUTCLIFF: Go ahead.

12 Q. BY MR. MITCHELL: When you entered the voting area, did
13 the Board Agent say anything?

14 A. The Board Agent had stated that there were a few
15 employees that she turned away, that the poll was closed.

16 Q. Okay. Did she say what she told those employees?

17 A. She said that she had told them that they could return
18 later in a voting period, the second voting period. I think
19 that's what she said.

20 Q. Did Mike Carrouth say anything to the Board Agent after
21 she explained this?

22 A. He had raised it again about, you know, the timepiece,
23 how, you know, the times were different and this could be a
24 major issue.

25 Q. Okay. What happened after that?

1 A. I don't --

2 Q. After Mike raised this issue, did the Board Agent stay
3 there or did she go?

4 A. She packed up her stuff and just left. I mean she
5 wasn't open for discussion or anything like that.

6 Q. Did anybody escort her out?

7 A. Yes, I escorted her out.

8 Q. Did you return to the voting area for the pre-election
9 conference for the second voting period?

10 A. I did.

11 Q. And did you escort the Board Agent in?

12 A. I did.

13 Q. Okay. And was she in front of you or behind you?

14 A. She would have been in front of me.

15 Q. Okay. Did you hear her say anything to Mike when she
16 came in?

17 A. No, I did not.

18 Q. Okay.

19 MR. MITCHELL: That's all I have.

20 MR. BROOKS: May I have the witness' statement?

21 **CROSS-EXAMINATION**

22 Q. BY MR. BROOKS: Mr. Greaves, in preparing for today's
23 hearing, did you talk with your testimony with anyone else?

24 A. No, sir.

25 Q. Did you review any documents?

1 A. Just my affidavit.

2 Q. So you reviewed your affidavit before today's hearing?

3 A. I looked at it, yes, yesterday.

4 Q. Is your memory today better than it was on August 20th
5 concerning the events of this day?

6 A. I would say it's about the same.

7 Q. About the same. Do you remember testifying that day on
8 August 20?

9 A. Sorry.

10 Q. Do you remember being asked questions about attending
11 the closing conference after the first session?

12 MR. MITCHELL: I object. What are we talking about?

13 HEARING OFFICER SUTCLIFF: Sustained. Let's go off the
14 record.

15 MR. BROOKS: Can we keep this on the record?

16 HEARING OFFICER SUTCLIFF: Well, I want to talk about
17 what you're doing because --

18 MR. BROOKS: Questioning the witness.

19 MR. MITCHELL: Based on what?

20 HEARING OFFICER SUTCLIFF: Based on what?

21 MR. BROOKS: Based on what he testified on August 20th.

22 HEARING OFFICER SUTCLIFF: There is no transcript for
23 you to impeach this guy on.

24 MR. BROOKS: That's not my problem.

25 HEARING OFFICER SUTCLIFF: Well, I know, but here's the

1 problem. I mean there's no way -- I mean the affidavit,
2 that's one thing but we don't have any record --

3 MR. BROOKS: I have notes -- as to what this witness
4 said. We haven't heard him testify yet. So we don't --

5 MR. MITCHELL: I object. I mean there's no transcript.
6 We don't know when he wrote those notes. We don't know
7 whether he heard him right. We don't know --

8 MR. BROOKS: You don't know when I wrote my notes in the
9 hearing?

10 MR. MITCHELL: No, we don't.

11 MR. BROOKS: I haven't even asked the questions. I'm
12 just attempting to -- based on process.

13 HEARING OFFICER SUTCLIFF: But you actually did. I mean
14 you said it was your memory that on August 20th. I mean
15 you're starting to go down a line. I know where you're
16 going.

17 MR. BROOKS: I am. Yes. I'm going to ask him questions
18 as to what he testified as to on August 20th and whether his
19 answers are consistent with what he said today.

20 HEARING OFFICER SUTCLIFF: Okay. I want to think about
21 this a little bit. Let's take a 10-minute break.

22 MR. MITCHELL: Can I just raise one response? I mean
23 we're trying to establish a brand new record, through
24 nobody's fault, but it's not right to bring up the old record
25 when we don't have any evidence of what was said. I mean his

1 testimony could be wrong. We don't have a transcript.

2 HEARING OFFICER SUTCLIFF: And I want to think about it.
3 So give me some time.

4 MR. MITCHELL: Sure.

5 HEARING OFFICER SUTCLIFF: Give me 10 minutes.

6 MR. BROOKS: If I might just say, people's -- in
7 hearings, prior statements are used to refresh memory or
8 impeach witnesses on a regular basis. They don't have to be
9 statements made at the hearing. They don't have to be in
10 writing to refresh memory for example. It can be anything.
11 In one setting, they used a toaster to refresh a memory, and
12 that's true.

13 MR. MITCHELL: You can't use your statement to refresh
14 memory, somebody else's memory.

15 HEARING OFFICER SUTCLIFF: I want to think about it,
16 okay. So I appreciate the thoughts. So --

17 MR. MITCHELL: He also said he was going to be
18 impeached, not refreshed.

19 HEARING OFFICER SUTCLIFF: Yes, he did. After 10
20 minutes, I'll be back.

21 **Off the record.**

22 **(Off the record.)**

23 **HEARING OFFICER SUTCLIFF: Okay. We are back on the**
24 **record.**

25 I indicated I wanted to think a little bit more about

1 the most recent line of questioning which was referring to a
2 previous date regarding this case, and the Union's attorney
3 was about to ask this witness some questions, and I have
4 decided I'm going to allow the questioning to continue and
5 give it whatever weight it deserves, and the Employer has an
6 objection on the record already. If you don't, go ahead and
7 make your objection.

8 MR. MITCHELL: I just want to make a standing objection
9 to anything coming out of this line of questioning.

10 HEARING OFFICER SUTCLIFF: Okay. All right.

11 MR. MITCHELL: So that we don't have to continually
12 object after every question.

13 HEARING OFFICER SUTCLIFF: Of course. The objection is
14 noted. I'm going to allow it and give it whatever weight it
15 deserves, okay. Go ahead, Mr. Brooks.

16 Q. BY MR. BROOKS: Mr. Greaves, do you remember where we
17 were before the break?

18 A. You asked me a question about if my memory is better
19 today or it was on August 20.

20 Q. Do you remember testifying on August 20 at a NLRB
21 hearing in this case?

22 A. Yes.

23 Q. Okay. Do you remember being asked questions by your
24 counsel with respect to what took place after the morning
25 polls closed?

1 A. Yes.

2 Q. Do you remember being asked questions as to whether the
3 Board Agent made any statements when you arrived after the
4 polls closed?

5 A. Repeat the question again.

6 Q. On August 20th, do you remember being asked any
7 questions as to whether the Board Agent made any statements
8 after you arrived at the polls?

9 A. Not right offhand, sir.

10 Q. Do you remember testifying that the Board Agent stated
11 that she turned a few voters away after the polls had closed?

12 A. Yeah, I remember her saying that.

13 Q. Okay. Do you remember being asked whether Mr. Carrouth
14 responded to that statement?

15 A. Yes.

16 Q. Do you remember what your answer was?

17 A. I guess the same answer I gave today. I mean --

18 Q. Do you remember that on August 20th your answer was that
19 you did not recall Mr. Carrouth responding?

20 MR. MITCHELL: I object. Relevance.

21 HEARING OFFICER SUTCLIFF: I have already overruled. Go
22 ahead.

23 Q. BY MR. BROOKS: Answer the question.

24 A. I don't recollect, sir.

25 Q. You don't remember one way or the other as to whether

1 that was your answer on August 20th?

2 A. No.

3 Q. But you're sure today Mr. Carrouth responded?

4 A. What now?

5 Q. Today, a month and a week after August 20th, you're sure
6 that Mr. Carrouth responded when the Board Agent said that
7 she had turned away --

8 A. Yes.

9 Q. Let me finish the question, sir. You're sure that he
10 responded when the Board Agent said she turned away someone
11 after the polls were closed?

12 A. What I said today, yes.

13 Q. Okay. When the Board Agent stated that she turned away
14 prospective voters after the polls were closed, did the
15 Employer's observer make any statements?

16 A. The Employer's observer, you mean Ms. Charetta Robinson?

17 Q. Yes. Did she make any statements when the Board Agent
18 said that?

19 A. I don't recollection.

20 Q. Was she present?

21 A. She was.

22 Q. Do you remember her protesting and stating that the
23 polls were not closed when those employees were there?

24 A. Ms. Charetta --

25 Q. Yes.

1 A. -- stating that? No, don't recollect her saying
2 anything.

3 MR. BROOKS: Nothing further.

4 HEARING OFFICER SUTCLIFF: I think I have one question
5 for you. Okay. Returning to your testimony regarding when
6 you arrived at the voting area right after the polls had
7 closed for the morning session, okay.

8 THE WITNESS: Okay.

9 HEARING OFFICER SUTCLIFF: I think you testified that
10 the Board Agent said there were a few employees that she
11 turned away and that she told them they could return to the
12 second session. Is that your testimony?

13 THE WITNESS: Yes, it is.

14 HEARING OFFICER SUTCLIFF: Okay. Did she say anything
15 regarding voting subject to challenge?

16 THE WITNESS: I don't recollect.

17 HEARING OFFICER SUTCLIFF: Okay. Anything further for
18 this witness?

19 MR. BROOKS: No.

20 MR. MITCHELL: No.

21 HEARING OFFICER SUTCLIFF: Okay. You are excused, sir.

22 THE WITNESS: Thank you.

23 **(Witness excused.)**

24 HEARING OFFICER SUTCLIFF: Any other witnesses,
25 Mr. Mitchell?

1 MR. MITCHELL: Yes, one more.

2 HEARING OFFICER SUTCLIFF: Okay.

3 MR. MITCHELL: We're going to call Charetta Robinson.

4 HEARING OFFICER SUTCLIFF: Okay.

5 MR. MITCHELL: Can I go get her?

6 HEARING OFFICER SUTCLIFF: Yes, please.

7 Would you please raise your right hand for me.

8 (Whereupon,

9 **CHARETTA ROBINSON**

10 was called as a witness by and on behalf of the Employer and,
11 having been first duly sworn, was examined and testified as
12 follows:)

13 HEARING OFFICER SUTCLIFF: Okay. Please have a seat,
14 state your name and spell it for the record.

15 THE WITNESS: My name is Charetta Robinson,
16 C H A R E T T A, Robinson, R O B I N S O N.

17 HEARING OFFICER SUTCLIFF: Just make sure you speak up
18 so we can all hear you. Thank you.

19 **DIRECT EXAMINATION**

20 Q. BY MR. MITCHELL: I was just going to tell you, I was
21 just going to remind you, Charetta, remember to talk loud for
22 the Court Reporter, okay.

23 A. Okay.

24 Q. Can you tell the Hearing Officer what your job is at
25 Garda?

- 1 A. A driver at Garda.
- 2 Q. You've got to talk louder.
- 3 A. A driver at Garda.
- 4 Q. Okay.
- 5 A. A messenger.
- 6 Q. And did you serve as company observer during the
- 7 election on July 21, 2010?
- 8 A. Yes.
- 9 Q. And were you the observer in the morning session?
- 10 A. Right. Yes.
- 11 Q. And what time did you meet to attend the pre-election
- 12 conference?
- 13 A. Around 5:00.
- 14 Q. About 5:00.
- 15 A. Uh-huh.
- 16 MR. MITCHELL: And I'm just going list who was there
- 17 unless you have an objection, just to verify.
- 18 MR. BROOKS: That's okay.
- 19 Q BY MR. MITCHELL: Was Fred Greaves present?
- 20 A. Yes.
- 21 Q. Was Earl McConnell present?
- 22 A. Yes.
- 23 Q. Who is one of your managers, correct?
- 24 A. Yes.
- 25 Q. Was Mike Carrouth present?

- 1 A. Yes.
- 2 Q. He was the attorney for the company, correct?
- 3 A. Yes.
- 4 Q. And was there a Board Agent present?
- 5 A. Yes.
- 6 Q. And did she have an assistant?
- 7 A. Yes.
- 8 Q. And there was you. And was there a Union observer?
- 9 A. No. Oh, yes, there was. Ms. Marks.
- 10 Q. Ms. Marks, right. Was there anybody from the official
- 11 Union there?
- 12 A. No.
- 13 Q. Okay. And did the Board Agent talk to you guys about
- 14 what was going to happen during the voting period?
- 15 A. Yes.
- 16 Q. Did she talk to you about putting together -- did she
- 17 put together the voting booth --
- 18 A. Yes.
- 19 Q. -- and the ballot box?
- 20 A. Yes.
- 21 Q. After she put everything together, did she ask everyone
- 22 in the room what the time was on their watch?
- 23 A. Yes.
- 24 Q. And did she say what time it was on her watch?
- 25 A. Yes.

- 1 Q. And what time did she say it was?
- 2 A. 5:20.
- 3 Q. 5:20. What was the same time on your watch?
- 4 A. No.
- 5 Q. What was the time on your watch?
- 6 A. 5:15.
- 7 Q. Okay. Do you set your -- did you set your watch
- 8 according to any clocks in the building?
- 9 A. The time clock.
- 10 Q. Okay. And where is the time clock? Which time clock?
- 11 A. The time clock -- in the bay area where employees clock
- 12 in.
- 13 Q. Okay. Take a look at Exhibit 1.
- 14 A. Yes.
- 15 Q. I was going to say where it was. Exhibit 1, do you see
- 16 this mark number 3?
- 17 A. Right.
- 18 Q. Is that where the time clock was?
- 19 A. Yes.
- 20 Q. Okay. And if you take a look at Exhibit 2, what do you
- 21 see there?
- 22 A. The time clock.
- 23 Q. Okay. And the big one in the middle, is that -- what is
- 24 that?
- 25 A. That's the time clock we clock in and out on.

1 Q. Okay. And what's to the right?

2 A. To the right is the old time clock.

3 Q. At the time of the vote, did you know which time clock
4 was being used by -- you were required to use?

5 A. The one in the middle.

6 Q. And had you received notice from the company about that,
7 about which time clock to use in the past?

8 A. Uh-huh. We all --

9 Q. Okay. Okay. Has anybody ever complained to you about
10 the time clock in the middle being slow or fast?

11 A. No.

12 Q. Have you ever heard any employees talk about it?

13 A. No.

14 Q. Was it -- okay. Going back to the pre-election
15 conference, did Mike Carrouth say anything to the Board Agent
16 about the time on her watch?

17 A. Yes, he said she was fast. She was 5 minutes fast.

18 Q. Okay. And did he -- what did she say?

19 A. She said her time was the official time.

20 Q. Did he tell her what it was fast in relation to?

21 A. He said, you know, that was not the time that everybody
22 else had, but she said everybody look at their watches, but
23 she's fast.

24 Q. Okay. Did the Board Agent indicate that she was willing
25 to make any type of change?

1 A. No.

2 Q. All right. What happened next? Did Mike and everybody
3 else leave?

4 A. Yes, they left.

5 Q. Okay. So you were in the voting area. Is that correct?

6 A. Yes.

7 MR. MITCHELL: May I approach?

8 HEARING OFFICER SUTCLIFF: Yes.

9 Q. BY MR. MITCHELL: Take a look at Exhibit 1.

10 Mr. Carrouth drew this. Would you look at 4, 5 and 6. Where
11 were you sitting?

12 A. I'm right here.

13 MR. MITCHELL: Let the record reflect that she's
14 pointing, 5 is at the top of the page, to the right of 5 at a
15 desk. Okay.

16 Q. BY MR. MITCHELL: So after the voting period started,
17 did voters come in and vote?

18 A. Yes.

19 Q. Okay. Did they come in all at once or did they trickle
20 in?

21 A. No, they trickled in.

22 Q. Toward the end of the session, did the Board Agent start
23 to take the voting booth apart?

24 A. Yes, she did.

25 Q. Okay. Do you know what time it was when she did that?

- 1 A. It was like 8:27.
- 2 Q. Was that 8:27 according to your watch or according to
3 the Board Agent's watch?
- 4 A. That was my watch and the Board Agent's watch because I
5 set my watch according to hers.
- 6 Q. When did you do this?
- 7 A. When we started. When she said it was the time, she was
8 going to be the official timekeeper, that's when I set my
9 watch to hers.
- 10 Q. Okay. So what did she say when she started at 8:27?
- 11 A. She was like they were slow. So, you know, I'm going to
12 start, you know, taking the things down, taking the table
13 down.
- 14 Q. Okay. How long did it take her to take that voting
15 booth down?
- 16 A. About a minute.
- 17 Q. Excuse me?
- 18 A. About a minute.
- 19 Q. Did anybody come into the voting area at that time?
- 20 A. A couple of minutes later, three guys came. Maybe about
21 a minute later, three guys came in.
- 22 Q. Okay. And where were they standing?
- 23 A. Like, not at the door. They were, you know, a little
24 bit --
- 25 Q. Okay.

1 A. -- not too far from the door.

2 Q. And what did she say to them?

3 A. She said you can vote or you can come back -- if you
4 vote, it's going to be a challenge and they said we'll come
5 back.

6 Q. Okay. And could you see if anybody was down the hall?

7 A. No.

8 HEARING OFFICER SUTCLIFF: Did you go look to see if
9 anybody was down the hall?

10 THE WITNESS: No, no.

11 Q. BY MR. MITCHELL: Did the Board Agent tell you during
12 the pre-election conference that you were supposed to stay in
13 the room?

14 A. Yes.

15 Q. Okay. How long did it take the Board Agent to explain
16 to the employees that the voting -- that she had closed down
17 and that their vote would be challenged or they --

18 A. Not long. It didn't take long because there wasn't no
19 back and forth conversation. It was like we'll be back.
20 We'll just come back for the afternoon session.

21 Q. So did she just make a statement?

22 A. She said you vote or you can come back in the afternoon.
23 If you vote, it will be a challenge, and they were like, all
24 right, we'll come back and vote.

25 Q. Do you have any idea what time it was when they left?

1 A. Maybe about a minute because it wasn't long. It was
2 like it was an extended period where they had a long
3 conversation. It wasn't a long conversation.

4 Q. Were these people wearing uniforms?

5 A. Yes.

6 Q. Do people come to work to your knowledge in their
7 uniform or do they change into their uniform in the locker
8 room?

9 A. They come in in their uniform.

10 Q. They come in in their uniform.

11 A. Yes.

12 Q. When these three employees left, that you saw in the
13 door, which way did -- which direction did they go?

14 A. The went --

15 MR. BROOKS: Objection. Relevance.

16 HEARING OFFICER SUTCLIFF: Overruled. I think it's
17 relevant. Go ahead.

18 THE WITNESS: They went back toward the bay.

19 Q. BY MR. MITCHELL: Okay. So if we take a look at
20 Exhibit 1, and we look at the break room, and you go out the
21 door in the corner, did they go to the left or to the right?

22 A. To the right.

23 Q. You said the right. It's really -- did they go towards
24 the bay?

25 A. Yes.

- 1 Q. And is that actually a left?
- 2 A. Left, yeah.
- 3 Q. Okay. Did Mike, the attorney, and the other Garda
- 4 people come back into the room?
- 5 A. Yes, after those people left.
- 6 Q. After those people left?
- 7 A. It was a few minutes after.
- 8 Q. Did the Board Agent say anything to Mike?
- 9 A. He asked her, how did everything, you know, how did
- 10 everything go, and she was like, fine, and then they talked
- 11 about the time, and that was it.
- 12 Q. Did she talk about the employees that came in to vote
- 13 and left?
- 14 A. Yes.
- 15 Q. Okay. What did she say?
- 16 A. She said we had three guys that came in, and I told them
- 17 they could vote challenged, whatever, and that was it.
- 18 Q. And did Mike say anything?
- 19 A. They went into a conversation.
- 20 Q. Do you remember the content of that conversation?
- 21 A. It was about the time about the time they came in.
- 22 Q. Do you remember what Mike was saying?
- 23 A. He was saying that did you close down early? And she
- 24 was like, no. But actually she did.
- 25 Q. Okay. And did you say anything to her about it at the

1 time?

2 A. No.

3 Q. Why not?

4 A. I didn't think it was my place.

5 Q. Okay. You testified earlier that you did not see down
6 the hall.

7 A. No.

8 Q. Okay. Was the other observer, and I apologize for not
9 remembering her name, but was the Union observer in a
10 position where she could see down the hall?

11 A. No.

12 Q. Where was she standing?

13 A. Can I show you?

14 Q. Yeah.

15 A. I was right here.

16 Q. Yeah.

17 A. And we were at the same table. So she was right here.

18 Q. Were you both sitting at the table?

19 A. Yes.

20 Q. Okay.

21 MR. MITCHELL: And that's all where -- let the record
22 reflect that's number 5 that Mr. Carrouth put there.

23 I don't have any other questions.

24 MR. BROOKS: Can I have the statement, please?

25 **CROSS-EXAMINATION**

- 1 Q. BY MR. BROOKS: Who were the employees who came to vote
2 late.
- 3 A. I did know one guy, Patrick Bush.
- 4 HEARING OFFICER SUTCLIFF: How do you spell that name?
- 5 THE WITNESS: P A T R I C K, Bush, B U S H.
- 6 Q. BY MR. BROOKS: You did not know the other two?
- 7 A. No, but I know him.
- 8 Q. I'm sorry.
- 9 A. No.
- 10 Q. And did you serve as the Employer's observer in the
11 afternoon session?
- 12 A. No.
- 13 Q. So you don't know whether those three voted or not?
- 14 A. No, I don't.
- 15 Q. Is Mr. Bush still working at the facility?
- 16 A. Yes.
- 17 HEARING OFFICER SUTCLIFF: Is that a yes?
- 18 THE WITNESS: Yes.
- 19 HEARING OFFICER SUTCLIFF: Okay.
- 20 Q. BY MR. BROOKS: Did you make a -- did you sign an
21 affidavit with respect to your knowledge of these events?
- 22 A. Yes.
- 23 Q. And do you recall that the affidavit was based upon what
24 you told someone?
- 25 A. Right, yes.

- 1 Q. And they drafted it from what you told them?
- 2 A. Yes.
- 3 Q. Do you recall it being complete?
- 4 A. As far as I know.
- 5 Q. You told them everything you knew about the events?
- 6 A. Right.
- 7 Q. You didn't leave anything out?
- 8 A. Not that I know of.
- 9 Q. You testified that you set your watch to the Board
- 10 Agent's watch?
- 11 A. Yes.
- 12 Q. Did you look at the Board Agent's watch when you did
- 13 that?
- 14 A. No, but she told the time that she had on her watch at
- 15 the time.
- 16 Q. And she said it was 5:15.
- 17 A. No, she said it was 5:20.
- 18 Q. She said it was 5:20.
- 19 A. And you had 5:15?
- 20 A. Yes.
- 21 Q. So you immediately changed your watch?
- 22 A. Yes, I changed my watch when she said that, yes.
- 23 Q. Even though there was a discussion going on at that
- 24 point between Mr. Carrouth and the Board Agent with respect
- 25 to the time?

1 A. That didn't have anything to do with me. They were
2 going back and forth. That didn't have anything to do with
3 me changing my watch.

4 Q. So you changed it immediately?

5 A. Yes.

6 Q. And what time did you change it to?

7 A. To her watch, 5:20.

8 Q. But how do you know her watch said 5:20 when you changed
9 your watch?

10 A. Because when she said we're going to go by my official
11 time, that's when I did.

12 Q. Okay. So that was after Mr. Carrouth -- before you knew
13 that his watch said 5:15.

14 A. Yes.

15 Q. Okay. So a period of time had gone by before you
16 changed your watch?

17 A. It wasn't a long period of time?

18 Q. Thirty seconds?

19 A. Probably less than that.

20 Q. Okay. So you don't know whether the Board Agent's watch
21 still said 5:20 when you moved your watch to 5:20?

22 A. No, I don't.

23 Q. Maybe hers said 5:21?

24 A. It could have.

25 Q. Okay. And yours is an accurate watch?

- 1 A. Is who?
- 2 Q. Accurate? Keeps time accurate?
- 3 A. Yes.
- 4 Q. Can you show it to me, please?
- 5 A. I don't have it on.
- 6 Q. You don't wear your watch --
- 7 A. That's when I'm working. No, I don't. That's a work
- 8 watch.
- 9 Q. It's a work watch. You only wear to work?
- 10 A. That's all.
- 11 Q. Now, you said that at about 8:27 the Board Agent started
- 12 taking down the polling area. Is that correct?
- 13 A. Yes.
- 14 Q. And that was based on you looking at your watch?
- 15 A. Yes, it was.
- 16 Q. Then why did you use the term about? I mean your watch
- 17 doesn't say about 8:27, does it?
- 18 A. No, it doesn't.
- 19 Q. It says 8:27 or 8:26 or 8:28?
- 20 A. Right.
- 21 Q. Then why did you use the term about?
- 22 A. It was 8:27.
- 23 Q. Now it was 8:27. You're sure of that?
- 24 A. Yes, I am.
- 25 Q. You are. You're sure you looked at your watch.

1 A. Yes, I am.

2 MR. MITCHELL: Objection. Asked and answered

3 HEARING OFFICER SUTCLIFF: Sustained.

4 MR. BROOKS: Okay. Thank you.

5 Q. BY MR. BROOKS: Do you remember what you said in the
6 affidavit about when the Board Agent started taking the time
7 down, the polls down?

8 A. Say that again now.

9 Q. Do you remember what you said in your affidavit about
10 when the Board Agent started taking the polls down?

11 MR. MITCHELL: Objection. He ought to let her read it.

12 MR. BROOKS: Eventually I will. I'm asking her if she
13 remembers what she said in it.

14 HEARING OFFICER SUTCLIFF: I'm going to overrule. You
15 may answer the question.

16 THE WITNESS: Do I know what now? Say it again.

17 Q. BY MR. BROOKS: You made an affidavit, right?

18 A. Right.

19 Q. Okay. Do you remember what you said in the affidavit
20 about when the Board Agent started --

21 A. I don't --

22 Q. Let me finish the question. -- about when the Board
23 Agent started taking the polls down?

24 A. I don't remember word for word of the affidavit.

25 Q. I'm sorry.

- 1 A. I don't remember word for word of the affidavit.
- 2 Q. What, if anything, do you remember about what you said
- 3 in your affidavit about that?
- 4 A. She took the polls down.
- 5 Q. At 8:27.
- 6 A. No, I didn't have the time 8:27 in my affidavit.
- 7 Q. Why not? You looked at your watch and said 8:27. You
- 8 didn't put that in your affidavit?
- 9 A. No.
- 10 Q. Why not?
- 11 A. Because the lady didn't ask me exactly what time when I
- 12 gave the affidavit.
- 13 Q. Well, I thought you told me you put in all the
- 14 information in your affidavit --
- 15 A. But she didn't ask me that. When she called, she didn't
- 16 ask me about the time that day.
- 17 Q. Well, is your affidavit --
- 18 MR. MITCHELL: Can you clarify what you're talking
- 19 about?
- 20 Q. BY MR. BROOKS: In your affidavit, didn't you say it was
- 21 2 or 3 minutes before the polls closed when the Board Agent
- 22 started taking the polling equipment down?
- 23 A. I don't remember exactly what I said.
- 24 Q. Okay. Let me show it to you.
- 25 A. Uh-huh.

1 MR. BROOKS: May I approach, please?

2 HEARING OFFICER SUTCLIFF: Yes.

3 Q. BY MR. BROOKS: I'm going to show you a document that's
4 labeled Affidavit of Charetta Robinson and ask if you can
5 identify that please.

6 A. (Reviews document.) Okay.

7 Q. Is that your affidavit, ma'am?

8 A. Yes, it is.

9 Q. Is your signature at the bottom?

10 A. Yes, it is.

11 Q. Signed it under penalty of perjury?

12 A. Yes, it is.

13 Q. Okay. Look at paragraph 5 please. Do you see -- can
14 you read paragraph 5 and tell me whether it refreshes your
15 memory with respect to what occurred?

16 A. (Reviews document.) Okay.

17 Q. Does that refresh your memory as to what occurred?

18 A. Yes, it does.

19 Q. Okay. What happened with respect to the Board Agent
20 taking the polls down?

21 A. She started taking the polls down.

22 Q. When?

23 A. Two or three minutes before 8:30.

24 Q. So it was 2 or 3 minutes before 8:30 that she started
25 taking the polls down, correct?

1 A. Correct.

2 Q. So you don't know that it was 8:27.

3 A. I had a watch on. So I mean it said 8:27.

4 Q. So that's 3 minutes, right?

5 A. Yes.

6 Q. Now, 2 or 3 minutes?

7 A. I said 2 or 3 minutes.

8 Q. So when you signed the statement under the penalty of

9 perjury, that it was about 2 or 3 minutes before 8:30, you

10 meant it to be 8:27?

11 A. No, it said 2 or 3 minutes. 8:27, that's 3 minutes. So

12 I said 2 or 3 minutes.

13 Q. What's 2 minutes?

14 MR. MITCHELL: Objection.

15 HEARING OFFICER SUTCLIFF: Sustained. Move on.

16 Q. BY MR. BROOKS: And whose watch did the Board Agent and

17 the observers use to maintain time?

18 A. The Board Agent's.

19 Q. So you looked at the Board Agent's watch?

20 A. No, I didn't. I never got that close to her.

21 Q. You indicated in paragraph 5 of the affidavit, didn't

22 you say that we used the Agent's watch to keep an eye on the

23 time? Isn't that what it says?

24 A. (Reviews document.) Because she was the official

25 timekeeper.

1 Q. Correct. So --

2 A. So whatever she said, that was what we went by, what her
3 watch said.

4 Q. Okay. So when she started taking down the polls, did
5 she announce what time it was?

6 A. No.

7 Q. And you didn't look at her watch. So you don't know
8 what time it was according to her watch when she started down
9 the polls?

10 A. No. I was going by my watch.

11 Q. Okay. And, in fact, you said in your affidavit that the
12 Agent started taking things down 2 or 3 minutes before 8:30
13 a.m. according to the time on her watch. Isn't that what the
14 affidavit says?

15 A. Yes.

16 MR. MITCHELL: I would object and say that she has
17 explained to him several times the basis for her --

18 HEARING OFFICER SUTCLIFF: I'm going to sustain the
19 objection.

20 MR. BROOKS: This is a new question.

21 HEARING OFFICER SUTCLIFF: It's -- what's the question.

22 MR. BROOKS: In the affidavit, the witness says that the
23 Agent started taking things down 2 or 3 minutes before 8:30,
24 according to the time on her, the Board Agent's watch. I'm
25 questioning her about how she knew what time it was on the

1 Board Agent's watch when she started taking it down.

2 HEARING OFFICER SUTCLIFF: I think she already answered
3 that. She indicated that she didn't look at the Agent's
4 watch.

5 MR. BROOKS: Okay. Then may I ask her why she, under
6 penalty of perjury, made this statement in her affidavit?

7 MR. MITCHELL: I object. I'd say she's answered that
8 already, too.

9 HEARING OFFICER SUTCLIFF: I'm going to sustain the
10 objection. I think she has answered the questions, and I
11 think you're trying to repeat.

12 MR. BROOKS: That's cross-examination.

13 HEARING OFFICER SUTCLIFF: Yes, but she's answered the
14 questions that you've asked her.

15 Q. BY MR. BROOKS: In your testimony today you said it took
16 a couple of minutes for the Agent to take all the equipment
17 down. Is that right?

18 A. Yes, a minute or two. It didn't take long.

19 Q. A minute or two.

20 A. It didn't take long for her to take it down because it
21 was just cardboard and some legs.

22 Q. And then you testified a couple of minutes later three
23 guys came in?

24 A. That was just a general statement.

25 Q. We're here, ma'am, to determine exactly what time things

1 took place. So has all your testimony been just an estimate?

2 A. She took the table down and after that a couple of guys
3 came in.

4 Q. A couple minutes later you said earlier. Okay. So it
5 took her a minute or two take the table to. That would take
6 you from 8:27 on your watch to what? 8:28 or 8:29.

7 A. Yes.

8 Q. And then a couple of minutes later would be 8:30 or 8:31
9 when these guys came in.

10 A. When they came in --

11 Q. How do you know that?

12 A. I looked at my watch.

13 Q. You looked at your watch. And what time did your watch
14 say?

15 A. It was before 8:30.

16 Q. Right. Because you testified that it was maybe about
17 8:29.

18 A. That's before 8:30.

19 Q. What does maybe about mean?

20 A. That it was before 8:30.

21 Q. Did you look at your watch and see what time they were
22 there?

23 A. It was before 8:30.

24 Q. No, my question is did you look at your watch and see
25 what time they were there?

1 A. Yes.

2 Q. Okay. What time did your watch say when they showed up?

3 A. About 8:29.

4 Q. About 8:29. You had a digital watch?

5 A. Yes.

6 Q. It doesn't say about a time, does it?

7 A. No, it doesn't.

8 MR. MITCHELL: I would object. He asked this question
9 three times, and she has answered the question.

10 HEARING OFFICER SUTCLIFF: I'm going to sustain the
11 objection. She has answered your question. She said 8:29.
12 She looked at her watch. She said she looked at her watch.

13 MR. BROOKS: She said about 8:29. The Employer says
14 that the polls closed, that's one of the objections, that
15 these individuals came before the polls closed, and this is
16 their only witness to it.

17 HEARING OFFICER SUTCLIFF: Okay.

18 MR. BROOKS: Aren't I allowed to cross-examine and test
19 her testimony?

20 HEARING OFFICER SUTCLIFF: But you have done it three
21 times, and she has answered the exact same way each time.

22 MR. BROOKS: I'm asking her what about means. She has a
23 digital watch. She said it has digits.

24 HEARING OFFICER SUTCLIFF: Okay.

25 MR. BROOKS: It doesn't have the word about next to

1 them.

2 HEARING OFFICER SUTCLIFF: Here's what I'm going to do.
3 I'm going to sustain the objection. Ask your question and --
4 ask your question.

5 MR. BROOKS: Okay.

6 Q. BY MR. BROOKS: Does your watch say about 8:29 on it?

7 A. No, it doesn't.

8 HEARING OFFICER SUTCLIFF: What time did your watch say?

9 THE WITNESS: 8:29.

10 HEARING OFFICER SUTCLIFF: Okay. Move on.

11 Q. BY MR. BROOKS: Why do you use the term about?

12 A. It was a term I use. It was about 8:29.

13 Q. Okay. Why did you look at your watch when these three
14 gentlemen came in?

15 A. Because she had already took the polls down. That's why
16 I looked at my watch.

17 Q. You didn't look at the Board Agent's watch?

18 A. No, I didn't.

19 Q. Her watch might have said 8:30.

20 A. It could have.

21 Q. I'm sorry.

22 A. It could have said 8:30.

23 Q. It could have said 8:30, maybe even 8:31. Okay.

24 A. My watch didn't say 8:30. Maybe her watch did, but my
25 watch didn't.

1 Q. Okay. But her watch was the official time. She
2 announced that before it started. Is that right?

3 A. Yes, she did.

4 Q. Okay. Did anyone leave the room before 8:30, the Board
5 Agent or any of the observers?

6 A. Not that I can recall.

7 Q. Okay. There was a notice posted outside the door about
8 the election?

9 A. Yes, there was.

10 Q. And there was another notice posted in the bay about the
11 election?

12 A. I didn't see that one outside in the bay.

13 Q. I take it then that no one removed those notices before
14 8:30.

15 A. I didn't see anybody remove them.

16 Q. And no one left the room to take them down?

17 A. No, not that I know of.

18 Q. Is there a reason in your affidavit that you never
19 stated that you set your watch to the Board Agent's watch?

20 A. It was never asked.

21 MR. BROOKS: I would like to move the affidavit as an
22 exhibit please, Petitioner 1.

23 **(Petitioner's Exhibit 1 marked for identification.)**

24 HEARING OFFICER SUTCLIFF: Any objection?

25 MR. MITCHELL: Do you have more copies?

1 MS. CLINE: I have two more copies. So there's four
2 total. Is that enough?

3 HEARING OFFICER SUTCLIFF: Do you have an objection? I
4 didn't hear you.

5 MR. MITCHELL: No objection.

6 HEARING OFFICER SUTCLIFF: Okay. Petitioner's 1 is
7 received into the record.

8 **(Petitioner's Exhibit 1 received into evidence.)**

9 MR. BROOKS: That's all.

10 HEARING OFFICER SUTCLIFF: Any redirect?

11 MR. MITCHELL: Yes.

12 **REDIRECT EXAMINATION**

13 Q. BY MR. MITCHELL: You said your watch was a digital
14 watch, correct?

15 A. Yes.

16 Q. Does it show seconds?

17 A. Yes, it does.

18 Q. So is it only 8:29 for 1 second on your watch?

19 A. No, it's not.

20 Q. But it only says 8:29 for 1 second, and then after that,
21 it would say 8:29 and however many seconds?

22 A. Right.

23 Q. Is that correct?

24 A. That's correct.

25 Q. To your knowledge did the Board Agent ever change her

1 watch after you set your watch according to hers?

2 A. Not that I know of.

3 Q. You also testified that the Board Agent removed the
4 notice after 8:30. Was that 8:30 according to the Board
5 Agent's watch? Is that what you're saying?

6 A. Yes.

7 Q. Do you know how long it was before she walked out of the
8 room to go remove the posting, the notice?

9 A. I never seen her remove the notice.

10 Q. Okay. When the Board Agent testified that the polls
11 were closed to the individuals that came in at the end of the
12 voting period --

13 A. Uh-huh.

14 Q. -- did she explain that to each one individually or at
15 one time?

16 A. One time.

17 Q. And how many people did you actually see?

18 A. Three.

19 Q. Could there have been more?

20 A. There could have.

21 MR. MITCHELL: That's all.

22 MR. BROOKS: There could have been more standing in the
23 room --

24 HEARING OFFICER SUTCLIFF: Are you making an objection?

25 MR. MITCHELL: I said standing in the room.

1 MR. BROOKS: I thought you said that's all you had.

2 HEARING OFFICER SUTCLIFF: What was the question?

3 MR. MITCHELL: He's got to make an objection.

4 HEARING OFFICER SUTCLIFF: Yes, you do.

5 MR. BROOKS: No, no, no.

6 HEARING OFFICER SUTCLIFF: What's the question?

7 MR. BROOKS: Excuse me. I'm wrong. Maybe I
8 misunderstood. I thought he said he had no further
9 questions. And so I'm starting recross.

10 MR. MITCHELL: Okay.

11 HEARING OFFICER SUTCLIFF: Oh, okay. Well, I didn't
12 realize that that's what you were doing. Sorry.

13 MR. BROOKS: Did you indicate you had no further
14 questions?

15 MR. MITCHELL: I did indicate that.

16 HEARING OFFICER SUTCLIFF: All right. Sorry.

17 MR. BROOKS: I'm just go anxious to keep this moving.

18 HEARING OFFICER SUTCLIFF: Thank you. Okay.

19 MR. BROOKS: Okay.

20 **RECROSS-EXAMINATION**

21 Q. BY MR. BROOKS: When the three individuals were standing
22 in the room --

23 A. Uh-huh.

24 Q. -- is it your testimony that there may have been four
25 people standing in the room?

- 1 A. No, I didn't see anybody standing -- else standing.
2 Three employees, that was it.
- 3 Q. Okay.
- 4 A. I don't know who could have been in the hallway or
5 anything.
- 6 Q. And your digital watch states seconds in addition to
7 minutes now?
- 8 A. Yes.
- 9 Q. Okay. So when the Board Agent started closing down the
10 polls, what time was displayed on your digital watch?
- 11 A. 8:27.
- 12 Q. How many seconds?
- 13 A. I don't know.
- 14 Q. Could it have been 1 second?
- 15 A. I don't know.
- 16 Q. Could it have been 59 seconds?
- 17 A. I don't know.
- 18 Q. And when these three gentlemen came into the room, and
19 you indicate today on your watch it said 8:29. Is that
20 correct?
- 21 A. Yes.
- 22 Q. Okay. How many seconds?
- 23 A. I don't know.
- 24 Q. So it might have been 8:29 and 59 seconds on your watch?
- 25 A. It could have been. I don't know.

1 MR. BROOKS: I have nothing further.

2 MR. MITCHELL: I have one question.

3 HEARING OFFICER SUTCLIFF: Go ahead.

4 **FURTHER REDIRECT EXAMINATION**

5 Q. BY MR. MITCHELL: Mr. Brooks testified that you stated
6 that the individuals came into the room. Did they come into
7 the room? Is that what you testified or did you testify that
8 they came to the door?

9 A. They came in the room.

10 Q. Excuse me.

11 A. They came in the room.

12 Q. How far into the room did they come? How many feet
13 inside? How close to the door.

14 A. They was real close to the door. They wasn't like a
15 long way from the door.

16 Q. Were they blocking the door? Could you see outside the
17 door with them standing there?

18 A. Barely, but you could like see with somebody standing in
19 the door. It's not a big door.

20 Q. Okay.

21 A. It's a break room.

22 Q. Okay.

23 A. So you can't --

24 Q. They were standing right inside the door?

25 A. Right.

1 MR. MITCHELL: Okay.

2 HEARING OFFICER SUTCLIFF: Do you have anything further?

3 MR. BROOKS: No.

4 HEARING OFFICER SUTCLIFF: I'm sorry. I'm waiting on
5 you.

6 MR. MITCHELL: I have nothing further.

7 HEARING OFFICER SUTCLIFF: I actually have a couple of
8 questions. Did the Board Agent have an occasion to announce
9 in any way that the polls were closed?

10 THE WITNESS: She was like there's no one coming in, so
11 she was going to start taking the --

12 HEARING OFFICER SUTCLIFF: But she didn't actually
13 announce to your knowledge --

14 THE WITNESS: No.

15 HEARING OFFICER SUTCLIFF: -- that the polls are closed?

16 THE WITNESS: No.

17 HEARING OFFICER SUTCLIFF: Okay. Did you have an
18 occasion to witness the closing of the ballot box?

19 THE WITNESS: Yeah, we saw them close it. You said the
20 ballot -- wait a minute.

21 HEARING OFFICER SUTCLIFF: The box. The box where the
22 ballots went in.

23 THE WITNESS: Okay.

24 HEARING OFFICER SUTCLIFF: Can you tell me a little bit
25 about what you observed?

1 THE WITNESS: The ballot box.

2 HEARING OFFICER SUTCLIFF: Yes.

3 THE WITNESS: She closed the box and she put tape over
4 it, and me and her had to sign it.

5 HEARING OFFICER SUTCLIFF: You and who signed it?

6 THE WITNESS: Me and Ms. Marks, after she taped the box
7 up.

8 HEARING OFFICER SUTCLIFF: Okay. So at what point did
9 that occur?

10 THE WITNESS: That was at the end, the very end.

11 HEARING OFFICER SUTCLIFF: At the very end.

12 THE WITNESS: The very, very end.

13 HEARING OFFICER SUTCLIFF: Okay. Looking at Employer's
14 Exhibit 1, this map, can you indicate if there are any --
15 besides the time clock which we've identified on the exhibit,
16 are there any other timepieces anywhere in this bay area, any
17 other kinds of clocks?

18 THE WITNESS: No.

19 HEARING OFFICER SUTCLIFF: Okay. In the break room, are
20 there any clocks in there?

21 THE WITNESS: I think one.

22 HEARING OFFICER SUTCLIFF: Did you observe that clock?

23 THE WITNESS: No --

24 HEARING OFFICER SUTCLIFF: Okay. Are there any other
25 places -- okay. So bay area. Is there an area where

1 employees go to change clothes or anything? Is there another
2 sort of employee gathering area?

3 THE WITNESS: There's a locker room.

4 HEARING OFFICER SUTCLIFF: Where's the locker room on
5 the map?

6 THE WITNESS: Here.

7 HEARING OFFICER SUTCLIFF: And you are identifying the
8 break room?

9 THE WITNESS: Yes.

10 HEARING OFFICER SUTCLIFF: Okay. It's the structure --
11 you're looking at the actual document. There's a line that
12 indicates the wall. You're pointing to the top of that wall
13 and that's the locker room that you're referring to?

14 THE WITNESS: Yes.

15 HEARING OFFICER SUTCLIFF: Are there any timepieces in
16 that area?

17 THE WITNESS: No, that's the men's locker room. So I
18 wouldn't know.

19 HEARING OFFICER SUTCLIFF: Okay. That's the men's
20 locker room. Is there a women's locker room?

21 THE WITNESS: Yes.

22 HEARING OFFICER SUTCLIFF: Where's the women's locker
23 room?

24 THE WITNESS: It's -- it's in between.

25 HEARING OFFICER SUTCLIFF: Okay. So in between. When

1 you identify where the men's locker room is, there's another
2 smaller room.

3 THE WITNESS: Right.

4 HEARING OFFICER SUTCLIFF: And then on the other side of
5 that smaller room is the women's locker room. Are there any
6 timepieces in that locker room?

7 THE WITNESS: No.

8 HEARING OFFICER SUTCLIFF: Okay. I have nothing
9 further.

10 MR. MITCHELL: I'm finished.

11 HEARING OFFICER SUTCLIFF: Okay.

12 MR. BROOKS: Nothing further.

13 HEARING OFFICER SUTCLIFF: Okay. You're excused.

14 **(Witness excused.)**

15 **HEARING OFFICER SUTCLIFF: Let's take a quick break.**

16 **Off the record.**

17 **(Off the record.)**

18 **HEARING OFFICER SUTCLIFF: Okay. We're back on the**
19 **record.**

20 Go ahead.

21 MR. MITCHELL: The company would like to preserve on the
22 record that the company did request to subpoena the Board
23 Agent to testify in this hearing. The Regional Director
24 denied that request. The company's position is that the
25 testimony of the Board Agent would be helpful and would help

1 determine the accurate facts in this matter. I'd like to
2 renew that request.

3 HEARING OFFICER SUTCLIFF: Okay. The request is
4 renewed, and it's my understanding through off-the-record
5 conversations, that there was actually an initial request
6 made by the Union when the hearing was first heard on August
7 20th, and there was a written letter from the Regional
8 Director to that response, and that there was a second,
9 pursuant to the Employer's request, that it heard later on,
10 there was a second letter by the Regional Director denying
11 that request. I propose that we put those two letters from
12 the Regional Director into the record as Joint exhibits. Any
13 objection to them being received as Joint exhibits. Joint 1
14 will be the first letter dated --

15 MS. CLINE: August 18th.

16 HEARING OFFICER SUTCLIFF: -- August 18th, and the
17 second letter is dated --

18 MS. CLINE: September 23rd.

19 HEARING OFFICER SUTCLIFF: -- September 23rd.

20 **(Joint Exhibits 1 and 2 marked for identification.)**

21 HEARING OFFICER SUTCLIFF: Any objections to the receipt
22 of Joint Exhibits 1 and 2 into the record?

23 MR. MITCHELL: No objection.

24 MR. BROOKS: No objection. And I join with the Employer
25 in renewing the request to subpoena the Board Agent.

1 HEARING OFFICER SUTCLIFF: The Regional Director has
2 spoken on the matter, and I have the letters that are now in
3 the record.

4 **(Joint Exhibits 1 and 2 received into evidence.)**

5 HEARING OFFICER SUTCLIFF: Okay. Mr. Mitchell, do you
6 have anything further, any witnesses that you'd like to call
7 at this time?

8 MR. MITCHELL: I don't have any witness at this time.

9 HEARING OFFICER SUTCLIFF: Okay. Mr. Brooks, do you
10 have any witness?

11 MR. BROOKS: I do.

12 HEARING OFFICER SUTCLIFF: Okay.

13 MR. MITCHELL: Excuse me. Before we rest, could we have
14 a ruling on --

15 HEARING OFFICER SUTCLIFF: Oh, I'm sorry. Pardon me.
16 He's right. We need to deal with this one last exhibit,
17 Employer's Exhibit 3, which is an e-mail. I thought about
18 this, and I'm going to allow it into the record. It is
19 received over the objection of the Union, and I'll just give
20 it whatever weight I feel is necessary, okay. All right. So
21 that's now received in.

22 **(Employer's Exhibit 3 received into evidence.)**

23 HEARING OFFICER SUTCLIFF: All right. Mr. Brooks, your
24 first witness. Go ahead.

25 Raise your right hand, please.

1 (Whereupon,

2

THOMETRA ROBINSON-MARKS

3 was called as a witness by and on behalf of the Union and,
4 having been first duly sworn, was examined and testified as
5 follows:)

6 HEARING OFFICER SUTCLIFF: Please state your name and
7 spell it for the record.

8 THE WITNESS: Thometra Robinson-Marks, T H O M E T R A,
9 Robinson, R O B I N S O N, -Marks, M A R K S.

10

DIRECT EXAMINATION

11 Q. BY MR. BROOKS: Where do you work?

12 A. Garda Cash Logistics.

13 Q. Which facility?

14 A. Smyrna.

15 Q. Did you serve as the Union observer during the election?

16 A. Yes, I did.

17 Q. Did you attend the pre-election conference?

18 A. Yes.

19 Q. What, if anything, was said during that pre-election
20 conference with respect to the time --

21 A. She --

22 Q. Who is she?

23 A. Ms. Myers, the agent, stated that -- after she set up
24 everything, that her watch was going to be the official
25 timepiece and she had the specific time of 5:20. She asked

1 if anybody had any issues. Nobody responded.

2 Q. Who else was in the room?

3 A. It was myself, Earl McConnell, the lawyer for Garda,

4 Mr. Carrouth, Fred Greaves, the observer for the company,

5 Charetta Robinson and also an intern with the Agent.

6 Q. Did you attend the morning voting session as an observer

7 for the Union?

8 A. Yes.

9 Q. And were you present the entire time?

10 A. Yes.

11 Q. What time did the Board Agent close the polls?

12 A. She closed the polls at 8:32.

13 Q. According to whose watch?

14 A. According to her watch. My watch was --

15 MR. MITCHELL: I'm sorry. I didn't understand.

16 THE WITNESS: I said according to her watch.

17 Q. BY MR. BROOKS: Did anyone prior to the Board Agent

18 closing the polls, was anyone in the room?

19 A. No.

20 Q. Did anyone arrive to vote after the polls were closed?

21 A. Yes.

22 Q. Who?

23 A. Three people, Patrick Bush, Lauren Parker.

24 Q. How do you spell Lauren?

25 A. L A U R E N.

1 Q. Parker?

2 A. Yes.

3 Q. And who else?

4 A. Mark Brandon, M A R K, Brandon.

5 Q. Brandon?

6 A. Yes.

7 Q. B R A N D O N?

8 A. Yes.

9 Q. Do you know all three of these to be parties in the
10 bargaining unit?

11 A. Yes.

12 MR. MITCHELL: I'm sorry. I didn't understand the
13 response.

14 HEARING OFFICER SUTCLIFF: She named the three
15 employees, and he asked if these were employees that were in
16 the bargaining unit and she said yes.

17 MR. MITCHELL: Okay.

18 Q. BY MR. BROOKS: And after they arrived, what, if
19 anything, did the Board Agent say to them?

20 A. She told them the polls had closed. They were allowed
21 to vote subject to challenge. She explained that challenge.
22 It means that she would put them in an envelope, a yellow
23 envelope. She said that after the election was over,
24 depending on the outcome, they would then determine whether
25 or not the votes would count because they wouldn't know right

1 there. It would take -- she offered them to come back in for
2 the second election. They all three chose to come back.

3 Q. Did you serve as a Union observer then for the afternoon
4 session?

5 A. Yes.

6 Q. Did Mr. Bush come back in the afternoon session?

7 A. Yes, he did.

8 Q. Did Mr. Bush vote in the afternoon session?

9 A. Yes.

10 Q. Did Mr. or Ms.?

11 A. Ms.

12 Q. Did Ms. Parker come back in the afternoon session?

13 A. Yes.

14 Q. Did Ms. Parker vote in the afternoon session?

15 A. Yes, she did.

16 Q. Did Mr. Brandon come back in the afternoon session?

17 A. Yes.

18 Q. Did Mr. Brandon vote in the afternoon session?

19 A. Yes.

20 Q. When Messrs. Bush and Brandon and Ms. Parker came to the
21 polls after they closed, were all three together?

22 A. Yes, they were.

23 Q. Did the Board Agent make a statement with respect to the
24 procedure that would be followed to all three at one time?

25 A. Yes, she did.

1 Q. Did any other employee attempt to vote after the polls
2 close?

3 A. No.

4 Q. Any other employee come into the voting room after the
5 polls closed?

6 A. No.

7 HEARING OFFICER SUTCLIFF: Which closure are you
8 referring to?

9 MR. BROOKS: I'm sorry. The morning closure.

10 Q. BY MR. BROOKS: Is your testimony that you've just given
11 in respect to the morning closure?

12 A. Yes.

13 Q. After the polls closed and these three individuals had
14 left the area, what happened?

15 A. Do you want to show you on the map?

16 HEARING OFFICER SUTCLIFF: Yes, please.

17 THE WITNESS: Patrick Bush and Mark Brandon went to the
18 men's locker room. Lauren is our billing clerk. Her office
19 is right next to --

20 MR. MITCHELL: I can't see.

21 HEARING OFFICER SUTCLIFF: Actually -- okay. I
22 thought --

23 THE WITNESS: It was. I'm sorry. I was --

24 HEARING OFFICER SUTCLIFF: These are the lockers, right?

25 THE WITNESS: These are the lockers, yes.

1 MR. MITCHELL: May I approach?

2 HEARING OFFICER SUTCLIFF: Yeah, yeah, you guys can come
3 up.

4 THE WITNESS: Right here is the men's locker room. This
5 is actually the men's and that's the women's. Right here,
6 the very end, that door there, that has a little slash,
7 that's Lauren Parker's office. She went that way.

8 HEARING OFFICER SUTCLIFF: Okay. So Lauren Parker went
9 out of the room.

10 THE WITNESS: They all went out of the room to the
11 right.

12 HEARING OFFICER SUTCLIFF: To the right, okay.

13 THE WITNESS: She went to her office. They went into
14 the locker room.

15 Q. BY MR. BROOKS: How do you know that?

16 A. Because that's a dead end. After I left, I went to the
17 restroom and she wasn't in there.

18 Q. No. How do you know what direction they went in when
19 they left?

20 A. Because I was actually standing there. When the Board
21 Agent got up and we started gathering our things, once she
22 closed the polls, and we were all standing there together
23 when they walked out. So I was standing and looked when they
24 left.

25 HEARING OFFICER SUTCLIFF: Where were you standing?

1 THE WITNESS: The table here, I was standing right in
2 front of it because I had my belongs on the backside. The
3 little bench type table, I put my belongings on the back of
4 the bench.

5 HEARING OFFICER SUTCLIFF: Thank you.

6 Q. BY MR. BROOKS: So you could see the direction that the
7 employees turned when they went out of the room?

8 A. Yes.

9 Q. Now, did the Employer representatives come into the
10 voting area after the polls closed?

11 A. Yes, they did.

12 Q. And what, if anything, was said at that time --

13 A. She told them three people had come to vote after she
14 had closed. She told them that she explained that they could
15 vote subject to challenge or they could come back in the
16 afternoon.

17 Q. Just for the record, she is who?

18 A. The Agent.

19 Q. What, if anything, was said in response to that?

20 A. Mr. Carrouth said that she had her watch 5 minutes
21 faster than the time clock, that her watch was fast and she
22 said, well, when I raised the issue in the beginning of the
23 time, you did not say anything, and that's when they got into
24 a little argument.

25 Q. Do you recall what said during the argument?

1 A. Yes. He said, well, I'm bringing it to your attention.
2 She said, well, when I brought up in the beginning, you
3 should have raised an objection then. He said I raised the
4 objection when they're brought to my attention. So she kind
5 of gave him a nasty response because we went through the
6 morning session and he didn't say anything. Nobody said
7 anything. So that's why they were actually arguing at the
8 end.

9 Q. Do you recall what time Mr. Carrouth and the other
10 Employer representatives came back to the polling area?

11 A. I don't know the specific time. I do know that it was a
12 few minutes after the polls closed.

13 HEARING OFFICER SUTCLIFF: Are you talking morning or
14 afternoon?

15 MR. BROOKS: Morning.

16 Q. BY MR. BROOKS: All my questions unless otherwise stated
17 are directed to the morning. Do you understand that?

18 A. Yes, I did.

19 Q. Do employees in the facility have watches?

20 A. Yes, they do.

21 Q. Have you ever been provided a notice by the Employer
22 that there's some sort of official time?

23 A. No.

24 Q. Are there clocks in the facility?

25 A. Yes.

1 Q. Where?

2 A. There's one in the break room. There is one in Fred's
3 office which is right next to the time clock, and there's one
4 in the vault --

5 Q. The new time clock -- do you have Exhibit 2?

6 A. Yes.

7 Q. The new time clock, can you identify that in Exhibit 2?

8 A. Yes, it's the big clock in the middle.

9 Q. And I see a white screen.

10 MR. MITCHELL: Objection. He's not laying a foundation
11 for what color the screen is.

12 MR. BROOKS: I mean this is a black and white --

13 HEARING OFFICER SUTCLIFF: Sustained.

14 Q. BY MR. BROOKS: There's a white screen. What color is
15 that screen?

16 A. It's green.

17 Q. Green. Okay. And is the time displayed on that screen?

18 A. Very little, yes.

19 Q. Is it --

20 HEARING OFFICER SUTCLIFF: What was your answer. I
21 didn't hear you.

22 THE WITNESS: Very, very little, yes. It's on there.

23 HEARING OFFICER SUTCLIFF: Okay.

24 Q. Where in the screen is it?

25 A. If you're facing it, looking at the picture, it's going

1 to be in the top left, like in the corner.

2 Q. How large are the digits used to display the time in
3 that screen?

4 MR. MITCHELL: Objection. He hasn't laid a foundation
5 for the size.

6 MR. BROOKS: He's seen it. It's evident --

7 MR. MITCHELL: Since you objected to the same thing, it
8 should be agreed that we were talking about --

9 HEARING OFFICER SUTCLIFF: Sustained.

10 MR. MITCHELL: -- the size of the --

11 MR. BROOKS: Sustained?

12 HEARING OFFICER SUTCLIFF: I'm sustaining the same
13 objection. So ask her if she's had an occasion to view this
14 and do --

15 Q. BY MR. BROOKS: Do you use the time clock?

16 A. Yes, every day.

17 Q. And when you use the time clock, do you look at it?

18 A. Yes.

19 Q. Have you ever seen the time displayed on the time clock?

20 A. Yes.

21 Q. Okay. Is it displayed in digits?

22 A. Yes.

23 Q. Okay. How long are the digits that it's displayed in?

24 MR. MITCHELL: Objection.

25 THE WITNESS: I would say average.

1 MR. MITCHELL: Objection. Same basis.

2 HEARING OFFICER SUTCLIFF: All right.

3 MR. BROOKS: Same basis?

4 MR. MITCHELL: Same basis you raised, and she sustained.

5 MR. BROOKS: I'm using units of measure. You're using
6 paces.

7 HEARING OFFICER SUTCLIFF: I'll sustain the objection.

8 MR. BROOKS: You're sustaining it?

9 HEARING OFFICER SUTCLIFF: I'm sustaining the objection
10 because if she doesn't know the -- well, let's back up. Have
11 you had an occasion to measure the digits on this machine?

12 THE WITNESS: They're not viewable from walking past it.
13 They're not viewable. That's all I can say. You cannot --
14 they're that small. You can't walk past it and look. So I
15 have no real measure for them.

16 HEARING OFFICER SUTCLIFF: All right. Okay.

17 Q. BY MR. BROOKS: Do you have a pen?

18 A. Yes.

19 Q. Can you make a mark on Exhibit 2 as to the type of
20 digits, please?

21 A. Yes.

22 Q. Let me see what you've marked please. On Exhibit 2 you
23 have marked, you have written a couple digits. Is that
24 correct?

25 A. Yes.

1 Q. And is that in the size of the digits on the display?
2 A. If you were standing up on the clock, yes, it would be.
3 Q. Okay. And what color are the digits?
4 A. Black.
5 Q. I'm sorry.
6 A. Black.
7 Q. So they are black with a green background?
8 A. Yes.
9 Q. How do they compare to the digits that are on the old
10 time clock?
11 A. A lot smaller.
12 Q. Can you see the digits on the old time clock from
13 various area of the bay?
14 A. Not various areas, no, but if you were walking past it,
15 at an angle, you would be able to see them, yes.
16 Q. Okay. Did the old time clock keep accurate time?
17 A. No.
18 Q. How far off was it according to what you knew the time
19 was?
20 A. It's been 5 minutes for the last year and a half --
21 HEARING OFFICER SUTCLIFF: When you say slow, what do
22 you mean?
23 THE WITNESS: It's been 5 minutes slower than the
24 regular time, like on my cell phone or anything like that.
25 It's been slow.

1 HEARING OFFICER SUTCLIFF: What about in comparison?

2 And your question was at to the old time clock?

3 THE WITNESS: Uh-huh.

4 HEARING OFFICER SUTCLIFF: What is the time -- did you
5 have an occasion to view, especially on the day of the
6 election, let's narrow it to that. On the day of the
7 election, did you have an occasion to view the two time
8 clocks sitting next to you?

9 THE WITNESS: The two, no, because the little one was
10 unhooked.

11 HEARING OFFICER SUTCLIFF: The little one was unplugged.
12 Okay.

13 THE WITNESS: The big one, yes.

14 MR. MITCHELL: Can you define the little one?

15 HEARING OFFICER SUTCLIFF: The one on the right. The
16 old time clock is on the right.

17 MR. MITCHELL: Is on the right.

18 HEARING OFFICER SUTCLIFF: Okay. On the day of the
19 election, was unplugged.

20 THE WITNESS: Uh-huh.

21 HEARING OFFICER SUTCLIFF: Okay. Go ahead.

22 THE WITNESS: And, yes, the big one because I was
23 actually on the clock anyway.

24 MR. BROOKS: I don't have any further questions.

25 MR. MITCHELL: I have a few questions. Do we have an

1 affidavit?

2 MR. BROOKS: (Shakes head no.)

3 MR. MITCHELL: Okay.

4 **CROSS-EXAMINATION**

5 Q. BY MR. MITCHELL: In your earlier testimony, you
6 testified that during the pre-election conference in the
7 morning, nobody from the company raised the issue of the
8 Board Agent's watch being faster than the time clock?

9 A. That's correct.

10 Q. And you were here during the testimony earlier of the
11 three individuals from the company that testified
12 differently, correct?

13 A. Yes.

14 Q. I just want to make it clear that you have basically
15 very different testimony, correct?

16 A. That is the truth.

17 Q. I didn't say that.

18 A. I was there and I know what I heard.

19 Q. I didn't ask that. I asked you if it was different
20 testimony?

21 MR. BROOKS: I object because the witness is not up
22 there to --

23 HEARING OFFICER SUTCLIFF: Sustained. Go ahead.

24 MR. MITCHELL: Okay.

25 Q. BY MR. MITCHELL: Now, you were the Union observer. Is

1 that correct?

2 A. Yes.

3 Q. Who asked you to be the Union observer?

4 A. The Union.

5 MR. BROOKS: Objection. Relevance.

6 MR. MITCHELL: It goes to show motive.

7 MR. BROOKS: Motive for what?

8 HEARING OFFICER SUTCLIFF: Actually, I'm going to
9 sustain the objection. I don't think that's relevant.

10 MR. MITCHELL: Okay.

11 Q. BY MR. MITCHELL: Were you paid by the Union to help
12 organize the facility?

13 A. No.

14 MR. BROOKS: Objection. Relevance.

15 HEARING OFFICER SUTCLIFF: Sustained.

16 MR. MITCHELL: May I explain why?

17 MR. BROOKS: She said no anyway. So --

18 HEARING OFFICER SUTCLIFF: Yeah. I mean --

19 MR. MITCHELL: Okay.

20 Q. BY MR. MITCHELL: Well, I'm going to ask the same
21 question in a different line of questioning. Have you been
22 promised that you will become a paid union organizer if you
23 successfully organize this facility?

24 A. No.

25 MR. BROOKS: Objection. Relevance.

1 MR. MITCHELL: He can call their witnesses --

2 HEARING OFFICER SUTCLIFF: Okay. I'm going to sustain
3 the objection. Go ahead.

4 Q. BY MR. MITCHELL: Did you participate in organizing the
5 Norcross facility?

6 MR. BROOKS: Objection. Relevance.

7 THE WITNESS: You know --

8 MR. BROOKS: Wait, wait, wait. When I object, the
9 witness has to wait until the Hearing Officer --

10 HEARING OFFICER SUTCLIFF: I'm going to sustain the
11 objection. Go ahead.

12 Q. BY MR. MITCHELL: You stated earlier in your testimony
13 that the Board Agent closed the first polling area at 8:32.

14 A. Yes.

15 Q. And that was according to her wristwatch?

16 A. Uh-huh.

17 Q. How do you know that?

18 A. Because my watch was the same as her time in the
19 beginning.

20 Q. Okay. So did you set it to meet it?

21 A. My watch was that way.

22 Q. Did you actually look at her watch? So if it was 8:32,
23 according to the Board Agent's watch, it would have been 8:27
24 according to the time clock if the time clock -- if her watch
25 was fast, 5 minutes fast, correct?

1 A. 8:30, no.

2 Q. Yes, it would.

3 MR. BROOKS: Objection. He's arguing with the witness.
4 He asked her a question.

5 MR. MITCHELL: Can I ask her the question?

6 HEARING OFFICER SUTCLIFF: I'm going to overrule. Go
7 ahead and rephrase your question.

8 Q. BY MR. MITCHELL: If her watch, if the Board Agent's was
9 5 minutes faster than the time clock, you've heard testimony
10 to that, correct? Correct?

11 HEARING OFFICER SUTCLIFF: You have to answer yes or no.

12 THE WITNESS: Yes.

13 Q. BY MR. MITCHELL: Okay. If the Board Agent closed the
14 polling period at 8:32, that means the time clock would have
15 been 8:27, correct?

16 A. No.

17 Q. Why not?

18 A. Because he asked me about the old time clock, not the
19 new time clock.

20 Q. But what I am talking about is the testimony that you
21 heard earlier today --

22 A. Uh-huh.

23 Q. -- that the company raised the issue to the Board Agent,
24 during the pre-election conference and stated that her watch
25 was 5 minutes faster than the time clock. You testified that

1 that didn't happen. What I'm stating is, what I'm asking is,
2 if her watch said 8:32 and the time clock was 5 minutes
3 slower, then the time clock would have 8:27, correct?

4 A. No.

5 Q. How could it not?

6 A. He asked me the old time clock's time and --

7 Q. I didn't ask you about the old time clock.

8 A. I was going by that, and I told you when you asked me of
9 the new time clock it was fine when I looked at it. So, no.

10 HEARING OFFICER SUTCLIFF: Okay. What you are asking
11 her though, I think it's more appropriate for our closing
12 statement than it is for testimony --

13 MR. MITCHELL: Yes.

14 HEARING OFFICER SUTCLIFF: -- because

15 MR. MITCHELL: She's not going to admit the time.
16 That's fine.

17 Q. BY MR. MITCHELL: You testified earlier that
18 Mr. Carrouth first raised the issue about the time clock
19 being 5 minutes slower than the Board Agent when they came
20 back in at the end of the vote. Is that what you testified
21 to?

22 A. Yes.

23 Q. How would Mr. Carrouth have known that it was slower if
24 he hadn't raised it before? I mean why would he all of a
25 sudden know it?

1 MR. BROOKS: Objection. Objection.

2 THE WITNESS: I --

3 MR. BROOKS: Don't speak. The witness has been asked to
4 speculate as to what's going on in Mr. Carrouth's mind.

5 HEARING OFFICER SUTCLIFF: Sustained.

6 Q. BY MR. MITCHELL: All right. You testified earlier that
7 the old time clock was 5 minutes slow. Is that correct?

8 A. Uh-huh.

9 HEARING OFFICER SUTCLIFF: Say yes or no.

10 THE WITNESS: Yes.

11 Q. BY MR. MITCHELL: Okay. You also testified that the old
12 time clock was unplugged on the day of the election?

13 A. Yes.

14 Q. So that means that everybody -- I mean there was only
15 one time clock to look at on the day of the election,
16 correct?

17 A. Yes.

18 Q. And that's the time clock?

19 A. Yes.

20 Q. And that's that the time clock that Mr. Carrouth
21 testified earlier was 5 minutes slower than the Board Agent's
22 correct?

23 A. I guess that's what he was talking about.

24 Q. Okay. We talked a little earlier or you talked a little
25 earlier about the three individuals coming into the voting

1 area at the end of the voting period, correct?

2 A. Uh-huh.

3 Q. And you testified that you were standing inside the
4 room. Is that correct?

5 A. Yes.

6 Q. And did the Board Agent explain to you, it was your job
7 to stay in the room and observe, correct?

8 A. Yes.

9 Q. And you testified that they, the three individuals, left
10 and went into the locker room, correct?

11 A. Yes.

12 Q. And did you see anybody walking down the hall?

13 A. No.

14 Q. Could you have seen anybody?

15 A. Yes.

16 Q. How could you have seen anybody?

17 A. Because you have to pass the break area, and I was
18 looking out the door and didn't see anybody walk past.

19 Q. Okay. I understand that, but if they came in from
20 the --

21 MR. MITCHELL: May I approach here?

22 Q. BY MR. MITCHELL: You testified earlier there you were
23 standing here.

24 A. Uh-huh.

25 Q. Okay. Could you have seen somebody walking right there?

1 And this is number 2, when they came in from the bay, if you
2 were standing inside the room?

3 A. Well, they wouldn't go anywhere else. Where would they
4 go?

5 Q. Okay. My question is did you see whether anybody was
6 coming into this door? Could you see?

7 A. No.

8 Q. Okay. So you don't know if somebody was walking in that
9 door when these people left.

10 A. The door was closed.

11 Q. Okay. But you don't know if there was somebody already
12 standing there, correct?

13 A. No, I don't.

14 HEARING OFFICER SUTCLIFF: Back up. What with the door?
15 You mentioned something about this door. This door at number
16 2?

17 THE WITNESS: Was closed. The -- was on the outside of
18 the door. That door was closed to the hallway.

19 HEARING OFFICER SUTCLIFF: How do you know was closed?

20 THE WITNESS: Because she made sure it was closed. She
21 didn't want anybody as far as management because we also have
22 supervisors that still run the bay area. They didn't want
23 anybody to see who was in that area, either going to the bay
24 area or not. She was very concerned about that. She wanted
25 that door closed.

1 HEARING OFFICER SUTCLIFF: When did that discussion of
2 that door at number 2 being closed, when did that discussion
3 take place?

4 THE WITNESS: In the morning before the polls opened.

5 HEARING OFFICER SUTCLIFF: During the election
6 conference?

7 THE WITNESS: Yes.

8 HEARING OFFICER SUTCLIFF: Okay. Now, what kind of a
9 door is that?

10 THE WITNESS: It's like a metal door.

11 HEARING OFFICER SUTCLIFF: It's a metal door. How big
12 of a door is this door?

13 THE WITNESS: It's about the same size as that. Well,
14 it's shorter.

15 HEARING OFFICER SUTCLIFF: Let's back up, this door,
16 have you had an occasion to have gone in and out of this
17 door?

18 THE WITNESS: Oh, yes.

19 HEARING OFFICER SUTCLIFF: Okay. When this door opens
20 or closes, is it really loud?

21 THE WITNESS: Yes.

22 HEARING OFFICER SUTCLIFF: Okay. It's loud.

23 THE WITNESS: Uh-huh.

24 HEARING OFFICER SUTCLIFF: Okay. When you are inside
25 the break room while the polls were open, could you hear that

1 door, that door at number 2, could you hear that door from
2 that break room?

3 THE WITNESS: Yes, you can hear the door when it opens.

4 HEARING OFFICER SUTCLIFF: You could hear it open and
5 close.

6 THE WITNESS: Yes. When that handle is turned, you can
7 hear it.

8 HEARING OFFICER SUTCLIFF: Okay.

9 THE WITNESS: And there's a lock that clicks.

10 HEARING OFFICER SUTCLIFF: So to the question that I
11 understand you to be asking, when I say you, I'm talking to
12 the Employer's attorney, you're asking whether or not you
13 could hear anybody -- whether she could -- Okay. Go ahead.

14 MR. MITCHELL: What I was asking is whether or not she
15 knew for a fact that nobody -- somebody -- excuse me. Does
16 she know for a fact that somebody was not standing right
17 there when they walked out?

18 HEARING OFFICER SUTCLIFF: And she said --

19 THE WITNESS: I do not know.

20 HEARING OFFICER SUTCLIFF: Okay. Go ahead. Anything
21 further?

22 MR. MITCHELL: No.

23 HEARING OFFICER SUTCLIFF: Mr. Brooks?

24 **REDIRECT EXAMINATION**

25 Q. BY MR. BROOKS: Did you look at the time clock on the

1 day of the election?

2 A. Yes.

3 Q. Was the time on the new time clock consistent with the
4 time on your watch?

5 A. Yes.

6 Q. It was the same time as the time on your watch?

7 A. Yes.

8 HEARING OFFICER SUTCLIFF: At what point did you look at
9 your watch?

10 THE WITNESS: Well, I looked at my watch when I walking
11 over. I wanted to make sure I wasn't running late.

12 HEARING OFFICER SUTCLIFF: Okay. And you said you watch
13 showed the time clock.

14 THE WITNESS: It doesn't go to the time clock. It was
15 just --

16 HEARING OFFICER SUTCLIFF: I mean it was --

17 THE WITNESS: Yeah.

18 HEARING OFFICER SUTCLIFF: Is it the same as the time
19 clock?

20 THE WITNESS: It was when I walked into the building
21 over to the clock, I knew I couldn't clock in until -- after.

22 HEARING OFFICER SUTCLIFF: So how do you know? Did you
23 look at your watch at that moment?

24 THE WITNESS: I didn't look at it, no.

25 HEARING OFFICER SUTCLIFF: Okay. So how do you know

1 your watch is the same as the time clock?

2 THE WITNESS: When I walked into the building, it was
3 actually 2 minutes to 5:00. When I walked up to the time
4 clock, it was 5:00. So I just assumed it was -- from me
5 walking into the door to the time clock.

6 Q. BY MR. BROOKS: Did you look at the time clock --

7 MR. MITCHELL: Objection.

8 HEARING OFFICER SUTCLIFF: Yes.

9 MR. MITCHELL: We're --

10 HEARING OFFICER SUTCLIFF: I was asking her questions.
11 So technically do you have redirect for this individual, this
12 witness?

13 MR. BROOKS: I was in the middle of redirecting.

14 HEARING OFFICER SUTCLIFF: Okay. Go ahead.

15 MR. MITCHELL: I didn't know she was done.

16 HEARING OFFICER SUTCLIFF: Yeah, go ahead.

17 MR. BROOKS: I'm sorry.

18 HEARING OFFICER SUTCLIFF: Go ahead.

19 MR. BROOKS: I was allowing the Hearing Officer to
20 interrupt me, but I didn't realize she was cutting me off.

21 HEARING OFFICER SUTCLIFF: Yes. Sorry about that.

22 MR. BROOKS: Okay.

23 Q. BY MR. BROOKS: Did you look at the new time clock at
24 any other time that day?

25 A. Only when I came back.

1 Q. And would that day be the day of the election?

2 A. Yes.

3 Q. And was it still consistent with your watch?

4 A. Yes.

5 Q. Have you compared that new time clock to your watch on
6 other days?

7 A. I have not since they installed it, no, not any other
8 day.

9 MR. MITCHELL: I'm going to object. He's talking about
10 a total different subject matter that isn't based on my
11 cross.

12 MR. BROOKS: I thought we were --

13 HEARING OFFICER SUTCLIFF: Well, I'm going to allow
14 overrule. I'm going to allow the questioning. It's not
15 quite that formal.

16 MR. MITCHELL: Okay.

17 MR. BROOKS: I have nothing further.

18 HEARING OFFICER SUTCLIFF: Do you have anything further?

19 MR. MITCHELL: No.

20 **HEARING OFFICER SUTCLIFF: Let's go off the record**
21 **(Off the record.)**

22 **HEARING OFFICER SUTCLIFF: Back on the record.**

23 During the off-the-record time, I have reconsidered my
24 ruling of not allowing the Employer to get into lines of
25 questioning regarding this witness, basically her credibility

1 is what I think you're asking about. So I think I will allow
2 the Employer to revisit that line of questioning. Go ahead.

3 **RECROSS-EXAMINATION**

4 Q. BY MR. MITCHELL: I asked you earlier if you were paid
5 by the Union to help organize either the Norcross facility or
6 the Smyrna facility?

7 A. No.

8 Q. And did you ever receive any compensation from the Union
9 for expenses or anything like that?

10 A. No.

11 HEARING OFFICER SUTCLIFF: Anything further?

12 Q. BY MR. MITCHELL: Did you pass our union paraphernalia
13 and T-shirts to employees?

14 A. No.

15 Q. You never did?

16 A. No.

17 Q. Did you have union paraphernalia and T-shirts in the
18 trunk of your car?

19 MR. BROOKS: Objection. I --

20 HEARING OFFICER SUTCLIFF: I think. Yeah.

21 MR. MITCHELL: She said she paid for the union
22 paraphernalia.

23 HEARING OFFICER SUTCLIFF: I'm not sure how that would
24 be relevant to her credibility. Do you want to establish --
25 help me understand what the relevance of that would be?

1 MR. MITCHELL: The relevance would be --

2 HEARING OFFICER SUTCLIFF: Paying for the paraphernalia.

3 MR. MITCHELL: That she was receiving something from the
4 Union in order to help organize it. So --

5 MR. BROOKS: T-shirts?

6 HEARING OFFICER SUTCLIFF: Well, okay. Ask the
7 question.

8 Q. BY MR. MITCHELL: Did you receive T-shirts and things
9 like from the Union to help organize?

10 A. No.

11 Q. Were they found in your car when the company had to
12 inspect the cars in July because of a cash shortage?

13 A. No, they checked my car last week for a cash shortage,
14 not July.

15 Q. And that's correct. I'm wrong. Was union paraphernalia
16 in the trunk?

17 A. No.

18 MR. BROOKS: Objection. What's the relevance?

19 HEARING OFFICER SUTCLIFF: Well --

20 MR. MITCHELL: I just don't --

21 HEARING OFFICER SUTCLIFF: No, it's -- okay.

22 MR. BROOKS: She answered. She said no.

23 HEARING OFFICER SUTCLIFF: She said no. Go ahead.

24 MR. MITCHELL: Okay. That's all.

25 HEARING OFFICER SUTCLIFF: Anything further?

1 MR. BROOKS: Not of this witness.

2 HEARING OFFICER SUTCLIFF: I don't have any questions.

3 Okay. You're released.

4 **(Witness excused.)**

5 HEARING OFFICER SUTCLIFF: Is there anything further by
6 way of testimony from either party?

7 MR. BROOKS: Yes, I would like to recall Charetta
8 Robinson.

9 HEARING OFFICER SUTCLIFF: Okay. Ms. Robinson, you've
10 been recalled. I'll just remind you that you're still under
11 oath.

12 (Whereupon,

13 **CHARETTA ROBINSON**

14 was recalled as a witness by and on behalf of the Union and,
15 having been previously duly sworn, was examined and testified
16 as follows:)

17 HEARING OFFICER SUTCLIFF: Have a seat. And,
18 Mr. Brooks, go ahead.

19 **DIRECT EXAMINATION**

20 Q. BY MR. BROOKS: Ma'am, are you work at the facility
21 today?

22 A. No.

23 Q. Are you being paid by the Employer?

24 A. I don't know.

25 Q. You don't know?

1 A. I didn't clock in.

2 Q. You didn't clock in?

3 A. No.

4 Q. So you don't know if you're being paid?

5 A. No.

6 Q. Did you testify at the August 20th hearing?

7 A. Yes.

8 MR. MITCHELL: Renew the objection with regard to
9 testimony at the August 20th hearing.

10 MR. BROOKS: First of all, I'm not going into what she
11 said.

12 HEARING OFFICER SUTCLIFF: I'm going to sustain the
13 objection. Go ahead. I'm sorry. Pardon me. I misspoke.
14 I'm going to overrule the objection and allow that
15 questioning to go on.

16 MR. BROOKS: Thank you

17 Q. BY MR. BROOKS: Did you work at the facility on August
18 20th?

19 A. That's the last time we were here?

20 Q. Yes.

21 A. Yes.

22 Q. Were you paid for August 20th?

23 A. Yes.

24 Q. So when you were down here -- you testified?

25 A. Yes.

1 MR. BROOKS: Nothing further.

2 MR. MITCHELL: Nothing further.

3 HEARING OFFICER SUTCLIFF: You're released. Thank you.

4 **(Witness excused.)**

5 HEARING OFFICER SUTCLIFF: Is there anything further by
6 way of testimony?

7 MR. BROOKS: No, ma'am.

8 MR. MITCHELL: I'd like to recall Fred.

9 HEARING OFFICER SUTCLIFF: Okay. Go ahead. Go get him.

10 Sir, you've been recalled to the stand. I just remind
11 you that you're still under oath.

12 (Whereupon,

13 **FREDERICK GREAVES**

14 was recalled as a witness by and on behalf of the Employer
15 and, having been previously duly sworn, was examined and
16 testified as follows:)

17 HEARING OFFICER SUTCLIFF: Go ahead.

18 MR. MITCHELL: Thank you.

19 **DIRECT EXAMINATION**

20 Q. BY MR. MITCHELL: Have you recently had an incident with
21 cash was missing from the facility?

22 A. Yes.

23 Q. When was that?

24 A. A week ago Monday.

25 Q. What's the protocol, the standard protocol for

- 1 responding to cash missing from the facility?
- 2 A. Lock down the facility.
- 3 Q. Do you search people's cars as part of that?
- 4 A. Yes.
- 5 Q. Whose cars do you search?
- 6 A. Every employee.
- 7 Q. Was Ms. Robinson-Marks working that day?
- 8 A. Yes.
- 9 Q. Did you have occasion to search the trunk of her
- 10 vehicle?
- 11 A. Yes.
- 12 Q. Why were you searching the trunk of her vehicle?
- 13 A. Looking for currency.
- 14 Q. Did you look through everybody else's trunk?
- 15 A. Yes.
- 16 Q. What did you find in her trunk?
- 17 A. There was a box.
- 18 Q. What was in the box?
- 19 A. T-shirts.
- 20 Q. What did the T-shirts say?
- 21 A. They looked like union T-shirts.
- 22 Q. Did they look like union T-shirts or were they union T-
- 23 shifts?
- 24 A. They appeared to be union T-shirts.
- 25 Q. Why do you say they appeared to be union T-shirts?

1 A. Because they had a big union thing on them.

2 Q. What's the union thing?

3 A. It looked like S P, something like that.

4 Q. Okay.

5 MR. MITCHELL: That's all I have.

6 **CROSS-EXAMINATION**

7 Q. BY MR. BROOKS: You went into her car. Is that correct?

8 A. I did not go into her car. I observed from the outside
9 of her car.

10 Q. You looked into her car?

11 A. Yes.

12 Q. In the parking lot?

13 A. Yes.

14 Q. And you observed what you thought were union T-shirts?

15 A. Yes, that is correct.

16 Q. You don't know what union?

17 A. Do I know what union?

18 Q. Yeah, you said S something, but you weren't sure?

19 A. No. I couldn't see the entire name.

20 Q. So you don't know what they were shirts for?

21 A. No.

22 Q. Okay. And then you reported this information to
23 someone. Is that correct?

24 A. No.

25 Q. Well, how did your counsel know that --

1 MR. MITCHELL: Objection. Attorney-client privilege.

2 MR. BROOKS: I haven't finished the question.

3 Q. BY MR. BROOKS: How did your counsel know that you had
4 observed union T-shirts or union paraphernalia in the
5 witness' car, in Ms. Robinson-Marks' car?

6 MR. MITCHELL: Objection. Attorney-client privilege.

7 MR. BROOKS: Are you going to hide your --

8 HEARING OFFICER SUTCLIFF: Okay. I'm going to sustain
9 the objection. What is the --

10 MR. BROOKS: I'm going to ask one question.

11 HEARING OFFICER SUTCLIFF: All right.

12 MR. MITCHELL: Thank you.

13 Q. BY MR. BROOKS: You did not tell anyone about what you
14 observed in her car?

15 A. We discussed it yesterday.

16 Q. We being who?

17 A. Me and my attorney.

18 Q. Who else was present?

19 A. Mike and my district manager, Earl McConnell.

20 Q. Why in the world did you raise --

21 MR. MITCHELL: I'm going to object.

22 HEARING OFFICER SUTCLIFF: I'm going to sustain the
23 objection. I don't think this is relevant. The only reason
24 this is potentially relevant is regarding whether or not
25 she's receiving compensation from the Union. What's in her

1 car is not relevant. I want this questioning stopped.

2 MR. BROOKS: They can respond in the ULP.

3 HEARING OFFICER SUTCLIFF: Stop. Anything further?

4 MR. BROOKS: No.

5 HEARING OFFICER SUTCLIFF: Okay. Anything further?

6 Q. BY MR. BROOKS: Did you spy in anyone else's --

7 HEARING OFFICER SUTCLIFF: Stop. Stop right now.

8 Q. BY MR. BROOKS: -- car to see if they had union
9 paraphernalia?

10 MR. MITCHELL: Objection.

11 HEARING OFFICER SUTCLIFF: I'm stopping him.

12 MR. BROOKS: Can I ask --

13 MR. MITCHELL: I object. She's already said it's
14 outside the line of questioning.

15 MR. BROOKS: With respect to the witness' car.

16 HEARING OFFICER SUTCLIFF: It's not relevant. It's not
17 relevant. I'm not going to allow you to go there. Stop. If
18 you have anything that has to do with compensation to this
19 employee?

20 MR. BROOKS: I can't test --

21 HEARING OFFICER SUTCLIFF: That's not --

22 MR. BROOKS: I mean you're telling me now that the
23 testimony that he gave as to what he claims he observed is of
24 no relevance to the decision in this case?

25 HEARING OFFICER SUTCLIFF: It's not relevant to this

1 case. That piece of it -- the only thing that's potentially
2 relevant is compensation she may or may not receive.

3 MR. BROOKS: His testimony --

4 MR. MITCHELL: It goes as to her credibility.

5 HEARING OFFICER SUTCLIFF: And quite obviously.

6 MR. BROOKS: Then I'm testing his credibility.

7 MR. MITCHELL: No, you --

8 HEARING OFFICER SUTCLIFF: Mr. Brooks, you're
9 absolutely -- I agree with --

10 MR. BROOKS: He made a statement --

11 HEARING OFFICER SUTCLIFF: Mr. Brooks, stop with this
12 line of questioning. It appears that you're trying to get
13 into unfair labor practice type questions, and I'm not going
14 to allow it.

15 MR. BROOKS: No.

16 HEARING OFFICER SUTCLIFF: That is what it appears to
17 me, and I'm making a ruling, stop.

18 MR. BROOKS: You are cutting me off before I even ask a
19 question.

20 HEARING OFFICER SUTCLIFF: You've already asked the
21 questions.

22 MR. BROOKS: With respect to what he saw in her car.

23 HEARING OFFICER SUTCLIFF: What else are you trying to
24 get at?

25 MR. BROOKS: Now I'm going to ask him what he saw in

1 other people's cars.

2 HEARING OFFICER SUTCLIFF: Not relevant.

3 MR. BROOKS: I want to test his credibility.

4 HEARING OFFICER SUTCLIFF: No, it's not relevant. I'm
5 not going to let you do it.

6 MR. BROOKS: Then if I'm being cut off here, I'm being
7 cut off.

8 HEARING OFFICER SUTCLIFF: On that issue you are. If
9 there's anything else --

10 MR. BROOKS: The witness gets to say what he wants. I
11 don't get to test his credibility?

12 HEARING OFFICER SUTCLIFF: Not regarding unfair labor
13 practice type issues is what you're asking.

14 MR. BROOKS: No, it's not.

15 HEARING OFFICER SUTCLIFF: No.

16 MR. BROOKS: The Employer --

17 MR. MITCHELL: I continue --

18 MR. BROOKS: -- continuously, sir.

19 MR. MITCHELL: I am.

20 HEARING OFFICER SUTCLIFF: Mr. Brooks, stop. I have
21 ruled on this. No more questions of this witness unless it
22 has to do with something other than potential unfair labor
23 practice proceedings.

24 MR. BROOKS: I'm not asking him questions about ULP
25 proceedings. I'm asking him questions with regard to his

1 credibility.

2 HEARING OFFICER SUTCLIFF: That doesn't relate to his
3 credibility. What he saw in someone else's car is not
4 related to his credibility. Stop. Sir, you're excused.

5 THE WITNESS: Thank you.

6 **(Witness excused.)**

7 HEARING OFFICER SUTCLIFF: Now closing statements.

8 MR. MITCHELL: Can I excuse the witnesses?

9 HEARING OFFICER SUTCLIFF: Does anybody have anything
10 further in the way of testimony? Mr. Brooks?

11 MR. BROOKS: In light of you cutting me off, I don't
12 have anything further.

13 HEARING OFFICER SUTCLIFF: Anything further?

14 MR. MITCHELL: No.

15 HEARING OFFICER SUTCLIFF: Release the witnesses.

16 During off-the-record conversations, the parties have
17 been advised of briefs in this case, but I will allow the
18 parties to make a closing statement regarding their
19 positions. I would ask that if anyone is going to be citing
20 any case law, and I do believe that you cited some case law
21 in your opening statement, I'd like for you to cite the case
22 on the record, please. So go ahead.

23 MR. MITCHELL: Thank you. Going back to the opening
24 statement, I stated the Board's standard for setting aside
25 the results of the election is found in the case of Wolverine

1 Dispatch, 321 NLRB 796 (1996). The facts in that case are
2 very similar to the facts in this case. In that case, the
3 Board Agent closed the polls during the voting period for 5
4 minutes. There were 34 eligible voters, 30 cast ballots, 15
5 were for and 11 were against the Petitioner.

6 The Board determined that it was possible that four
7 voters could have arrived when the Agent was gone and left
8 without voting. As a result, the Board found that the number
9 of employees possibly disenfranchised by the unscheduled
10 closing of the polls was sufficient to affect the election
11 results. The Board rejected any rationale that the objecting
12 party must affirmatively demonstrate that any employees were
13 disenfranchised. Instead, the Board found that the proper
14 standard and I quote, "The proper standard is whether the
15 number of employees possibly disenfranchised, there four or
16 five, is sufficient to affect the election outcome, not
17 whether the number of voters or any voters at all were
18 actually disenfranchised."

19 This is the standard that the Hearing Officer must
20 consider today. Hearing today's testimony, the company
21 presented very strong evidence of a number of different
22 things.

23 First of all, the company presented evidence that the
24 Board Agent used a watch that was approximately 5 minutes
25 faster than the time clock, which we submit was proven to be

1 accurate. The Board Agent closed the polls even according to
2 her watch which was shown was fast. There were employees
3 that were prevented from voting during the first voting
4 period because of the Board Agent's actions. And it is
5 possible, it is possible that others could have been
6 dissuaded from coming in and voting while the voting period
7 should have been open, when those employees were sent away.

8 We've got two areas. One where our position is that she
9 closed the voting area early according to her fast watch and
10 according to the accurate time watch which she was notified
11 to the time clock, which she was notified that employees
12 relied on.

13 Twenty people did not vote in the election. The company
14 lost by one vote. The number of employees possibly
15 disenfranchised was sufficient to affect the outcome of the
16 election, and if the standard set forth in Wolverine Dispatch
17 is applied, as it should be, the election should be set
18 aside.

19 Wolverine Dispatch is not the only case where the Board
20 decided the standard. The standard was reaffirmed in the
21 Midwest Canvas Corporation case, and that's 326 NLRB 58, a
22 1998 decision. Wolverine Dispatch is also consistent with
23 established Board precedent in the Pea Ridge Iron Ore
24 Company, 335 NLRB 161 (2001), where the Board Agent's opening
25 of the election polls 7 minutes late was objectionable. B&B

1 Better Baked Foods, Inc., 208 NLRB 493 (1974), is another
2 case that stands for the same proposition.

3 There's an old case, Repcal Brass Manufacturing Company,
4 109 NLRB 4; it's a 1954 case. The case is very similar in
5 our case factually in that the Employer produced evidence
6 that the watches of members of the election parties compared
7 to a nearby time clock, revealed a 1 1/2 to 2 minute
8 discrepancy between the Board Agent's watch and the accurate
9 time. Basically what the Board determined in that case is
10 that the proper election procedure, that the Board Agent
11 require every reasonable precaution or follow every
12 reasonable precaution, that full opportunity to vote be given
13 to the employee. I believe this is relevant because the
14 Board Agent, we've provided evidence that the Board Agent did
15 know that her timepiece was different than that on the time
16 clock and that that was something of concern by the company.
17 All she had to do was walk over there, take a look at it, and
18 change her watch.

19 Now we under and we're not denying that the Board Agent
20 is in charge of the election, and if you look at the Case
21 Handling Manual, two specific sections come to mind. One is
22 11324 which states that, "The polls should not be closed
23 early even though it may appear that 100 percent of the
24 eligible voters has voted." We believe that we've provided
25 excellent evidence that it was indeed closed before she --

1 her watch said it was closed and it was definitely closed
2 before the time that was reflected on the time watch.

3 Section 11320 of the Case Handling Manual also states
4 that the Board Agent will select the official timepiece and
5 so inform the observers. We do not contest that the Board
6 Agent has the right to select the official timepiece. The
7 Case Handling Manual never says that the Board Agent has the
8 right to open the polls at the wrong time. She can't just
9 select a watch and decide what time she wants to use. She's
10 required to take every reasonable precaution to ensure that
11 people are able to vote, and by failing to go and check on
12 the issue that was raised by the company, she failed to meet
13 that obligation.

14 Now, the Union has presented what we would submit is
15 questionable testimony in support of its position. First,
16 the Union wants the Hearing Officer to believe that the
17 company did not raise the issue to the Board Agent about her
18 having the wrong time on her watch during the first pre-
19 election period. The company provided testimony of three
20 people, three people that are reliable, three people that
21 really have no motivation to lie and perjure themselves in a
22 situation like this. We think there's no motivation for them
23 to lie, and we believe that their testimony was consistent.

24 The Union, on the other hand, produced one witness, and
25 we believe that her testimony is inconsistent with the facts.

1 Second, the Union clearly wants the Hearing Officer to
2 apply wrong standard here. The Union's position appears to
3 be that the company is required somehow to prove that
4 individuals were not able to vote. That's not the standard
5 set forth in Wolverine Dispatch. That's not the standard set
6 forth in the cases that we cited.

7 The case of Pea Ridge Iron Ore Company, which is 335
8 NLRB 161, a 2001 decision, including Chairman Hurtgen and
9 Members Liebman and Walsh made this decision, and in that
10 case, they affirmed the standard made in Wolverine Dispatch.
11 They state that the Board has made it clear that this
12 objective standard not only safeguards the choice of majority
13 of employees voting in an election, but also is necessary to
14 protect the integrity of the election process itself.
15 They're talking about the standard being that when the
16 election polls are not open at their scheduled times, the
17 proper standard for determining whether a new election should
18 be held is whether the number of employees possibly
19 disenfranchised is thereby sufficient to affect the election
20 outcome, not whether those voters or any voters at all were
21 actually disenfranchised. And the purpose of having this
22 standard is to protect the integrity of the election process
23 so that a company is not required to go out and question
24 people and interrogate people. The issue really is did the
25 Board Agent's conduct to do anything that could have possibly

1 prevented someone from voting, and if they did, were the
2 number of people that were possibly disenfranchised enough to
3 affect the outcome of the election. We believe that the
4 facts strongly support our position on that.

5 The third thing that we believe the Union may try to do
6 is try to distinguish some of the facts of the cases that
7 we've presented. The issue there, though, that the Board
8 looks at when it distinguishes a Wolverine Dispatch standard
9 is not the timing of when the polls should have been opened.
10 In other words, just because the voting period was delayed 20
11 minutes at the beginning versus 3 minutes at the end is
12 really not relevant when you look at how the Board
13 distinguishes Wolverine Dispatch. If you look at the cases
14 where they have actually distinguished that, what they're
15 actually looking at, and when they do distinguish Wolverine
16 Dispatch, is they determine that the number of employees that
17 were possibly disenfranchised could not have affected the
18 outcome of the election. That's the standard that they're
19 looking at. So any attempts to distinguish it based on, you
20 know, how long the polls were closed is really irrelevant.
21 What matters is were the polls closed when they were supposed
22 to be open and could somebody have possibly attempted to vote
23 and was denied that opportunity to vote.

24 We believe that we have been able to show that. We've
25 specifically shown that, first of all, if the time clock is

1 actually correct, if her watch was faster than the time
2 clock, there was plenty of time for people to be
3 disenfranchised, but also when the testimony shows that she
4 actually talked to employees at the door or right inside the
5 door, there's testimony on both sides that's uncontested,
6 that it is possible people could have been in the hall, and
7 if those people were dismissed and walked away, that could
8 have discouraged people from coming in and voting while there
9 was still some time to vote, either under her clock and
10 especially under the time clock's time.

11 In summary, the Board Agent's conduct shortened the
12 election period, and it's very likely, not just possible,
13 that employees were not able to vote. The Union's going to
14 claim that the company has some burden to show that people
15 didn't vote. That's not the case. That's not what the Board
16 law says. All we need to show is that the conduct could
17 disenfranchise the voters. We submit that the company has
18 met this burden. Twenty employees didn't vote, and it only
19 took one vote. So one vote mattered, and in this situation,
20 we feel like the evidence is very strong to set aside the
21 election.

22 HEARING OFFICER SUTCLIFF: Mr. Brooks.

23 MR. BROOKS: Thank you. There are two issues the
24 Employer raises. Number one, the issue is when the Board
25 Agent delegated the official timepiece -- and number two, the

1 question was whether the Board Agent closed the polls early.

2 With respect to the first issue, the rules are very
3 clear in 11320, the Board Agent will select the official
4 timepiece and so inform the observers. There's no dispute
5 that that took place. Rather, what the company is disputing
6 is the Board Agent's right to choose the official timepiece.
7 There's nothing in the rules that states she doesn't have the
8 right to select her watch. The company then says, well, our
9 time is a few minutes different than the Board Agent's watch.
10 Therefore, we have the right to demand our time be used, and
11 she has to reject her watch. There's nothing in the rules
12 that say that and there's no case law that so holds.

13 The company's asking you today to create new case law.
14 That isn't necessary because you will have lots of disputes
15 if you do that between parties as to what the official time
16 is. And the reason why this is in the Case Handling Manual
17 is because the Board sought to eliminate those disputes such
18 as the one in the case that the company relies on so
19 strongly, in Repcal, the 1954 case, which I suggest to you
20 came out, was handed down by the Board prior to this language
21 being put in the Case Handling Manual.

22 Repcal is not at all similar to this case because in
23 that case there was no grieving at the pre-election
24 conference as to what the official time would be. No one
25 designated the official time. When it came to close the time

1 to close the polls, the Board Agent in that case relied upon
2 the Board Agent's time and someone objected and said, no, my
3 watch is different. It's a minute off or 2 minutes off, or
4 whatever the time difference was, and the Board Agent
5 continued to close the polls based upon the Board Agent's
6 timepiece.

7 That's not the circumstance in this case. In this case,
8 the time, the official time was selected prior to the polls
9 being opened and used in opening the polls and closing the
10 polls. There's no shortening of the election period here
11 because to the extent that the Employer says our clock is a
12 little different and it should run a couple of minutes later,
13 the polls were opened a couple of minutes early. It's still
14 the 3-hour timeframe the parties selected.

15 There's nothing in the stipulated election agreement
16 that we heard from the Employer that says the parties
17 stipulated that the Employer got to set the time it would
18 start. There's nothing in the notice of election that said
19 that the 5:30 a.m. start would be based on the time clock.

20 And then we get to the issue of the time clock. The
21 Employer today, based on their investigation yesterday, says
22 that the clock was accurate in July. Their investigation is
23 hearsay. It should be rejected. It's not reliable. Look at
24 Exhibit 3, that went in over our objection. All this is, is
25 internal Employer information. Reasonably self-serving

1 because they want to win this case? Perhaps. What does it
2 say? It says that the time clocks get their time from the
3 ADP server, which gets its time from Microsoft Windows. You
4 know, you have a computer in your office that runs Windows.
5 I think NLRB computers run Windows. There's no way to set
6 the time. It runs, mine at least, runs in the bottom corner.
7 Sometimes that time's accurate. Sometimes it's not.
8 Software is running it. Your computer has a battery.
9 Sometimes that battery runs slow. There's no evidence to
10 suggest that the ADP server running Microsoft Windows had the
11 accurate time. They want you to presume it did or they want
12 you to believe, even beyond this, that there was some
13 conversation with someone who hasn't been identified that
14 somehow was connected to the internet to log in, but that's
15 not what Employer Exhibit 3 says. It says Windows runs it
16 based on their server. Windows is running their server. So
17 how do they know that's correct?

18 Now, it would have been very easy for them to establish
19 it was correct by bringing someone, maybe he would have
20 testified, subject to cross-examination to explain their
21 systems and verify it. Why is it important we know it's
22 accurate? Because they're claiming that a minute or a couple
23 of minutes is important, and we're suggesting to you that
24 even based on this, their time clock could be off. If you
25 accept their testimony, it still could be off by a minute or

1 a couple of minutes from what anyone else would claim the
2 time was.

3 They have not met their burden, and even if they did,
4 even if their clock is different than the timekeeper's, the
5 Board Agent's clock, it doesn't matter. She gets to
6 designate the official time. She did so in this case
7 consistent with the rules.

8 So then you get to the, you know, and that's different
9 than the other cases they cite, too, in which time was not
10 permitted to employees to vote, during what everyone agreed
11 was a set period of time. The polls closed early. Wolverine
12 involves a case in which the polls were closed by the Board
13 Agent during the timeframe. It wasn't a question of whether
14 it started earlier or ended late or whether a right time was
15 used. It was the period of time in which it was closed and
16 then reopened.

17 Now the Employer then says -- well, let me go back a
18 minute to the first position, the first question. The
19 company says we raised this during the meeting prior to the
20 opening of the polls. The Union's witness disputes that.
21 The company says, well, we've got three people. So I guess
22 you've got to step it up. The company's position is
23 incongruent and inconsistent with what they claim happened
24 thereafter because they believe that when they came to the
25 polls after they closed in the morning, and the Board Agent

1 explained that a number of voters were turned away after the
2 polls had closed, Mr. Carrouth said that's why you should be
3 using the time clock as the time, and he says, the others
4 say, to the extent I remember it accurately, that the Board
5 Agent said, well, you should have objected.

6 Now, why in the world would the Board Agent say you
7 should have objected if it all went down like the company
8 claims where there was an extended, somewhat heated
9 conversation between the parties before the polls opened. Is
10 there a claim here that this Board Agent who works for the
11 NLRB is so out of touch with reality that she didn't remember
12 that conversation that allegedly took place? There is no
13 reliable evidence that the polls closed early according to
14 the official timepiece.

15 The company's entire case with respect to the polls
16 closing early according to the official timepiece is based
17 the testimony of Charetta Robinson, testimony that today grew
18 much beyond what was offered in her affidavit, and her
19 affidavit's in the record, and you'll see that she talks
20 about a couple of minutes or uses phrases like that, where
21 today she said I looked at my watch. It's a digital watch
22 and it was set to what the Board Agent said and it was 8:27
23 and then it was 8:29, she was sure about that today.

24 But even accepting, and the Union's witness testified
25 differently and the company established that Board Agent

1 disagrees, too, is that the company's testimony was that the
2 Board Agent explained to those people that came to the
3 meeting that a number of voters came after the polls closed.
4 And, by the way, when the Board Agent said that to
5 Mr. Carrouth and the others, Charetta Robinson was in the
6 room and Charetta Robinson didn't say, hey, I looked at my
7 watch and it was 8:29. It was before the polls closed, nor
8 did Charetta Robinson explain how the polls closed other than
9 she said that the booth was taken down. But the door were
10 open and the notices weren't taken down. So people could
11 come in to vote -- time.

12 Let's look at what Charetta Robinson today believes the
13 story is. She says that at the pre-election conference, the
14 Board Agent said my watch says it's 5:20, and that there then
15 was a discussion between the Board Agent and Mr. Carrouth as
16 to what the time was, whether it was 5:15 or 5:20. She
17 estimated the discussion took 30 seconds. That suggests to
18 you that the conversation, if it's to be accepted that it
19 took place, as described by the witnesses, where the company
20 suggested it lasted longer than 30 seconds, but let's just
21 assume that it was 30 seconds since Charetta Robinson said
22 that. She then set her watch to the Board Agent's watch.
23 She then turned her watch to 5:20. So at that point, the
24 Board Agent's watch might have been 5:21. Are we nitpicking
25 here? No. Because according to Employer, the polls closed 1

1 minute early. 8:29 is when Charetta Robinson said those
2 three individuals came in. So let's make sure that the
3 Employer through their own witnesses proves what they claim
4 happened.

5 So Charetta Robinson's watch is off maybe 30 seconds
6 based on her own testimony as to what she said. Now let's
7 also assume or understand that the Board Agent's watch, when
8 she said it's 5:15, it might have been 5:15 and 59 seconds,
9 where Charetta Robinson set her watch to 5:15. It may be
10 been 5:15 and 0 seconds. So you have another 59 seconds of
11 disconnect possible when she adjusted her watch.

12 So now you have 59 seconds and 30 seconds. So you've
13 got 89 seconds, which is a minute and a half that those two
14 watches could have been different, consistent with
15 Ms. Robinson's testimony.

16 So if possibly the Board Agent's watch is a minute or 89
17 seconds faster than Ms. Robinson's, and Ms. Robinson says I
18 looked at my watch when those three people came in, and it
19 was 8:29, the Board Agent's watch may have said 8:30 and 29
20 seconds, which means that the polls should close. It's 8:30.

21 Now, let's suppose that Charetta Robinson's watch said
22 it was 8:29 and 59 seconds. She admitted it might have been.
23 She didn't look at the seconds. She can't tell us what the
24 seconds were. That means the Board Agent's watch could very
25 well have been 8:31 or almost 8:32 based on what Ms. Robinson

1 testified to today as to how she set her watch. That's not
2 closing the polls early in any circumstance. The polls are
3 closed when they're supposed to be, and had the Board Agent
4 permitted those three individuals to vote, she would have
5 been violating the rules that they claim have to be applied
6 in this case, the rules that require the employee who arrives
7 at the polling place after the designated polling period has
8 ended is not entitled to have his or her ballot counted
9 absent extraordinary circumstances unless the parties agree
10 not to challenge the ballot, 11324.1 --

11 Now, even if you accept the fact that it was closed
12 early, there's no evidence of why they would have closed
13 early? What was the advantage? She had to wait anyway for
14 the Employer's representative to come and hold a meeting and
15 seal the box. But even if she did, the only evidence is that
16 three people came in the last minute, at 29 after according
17 to Charetta Robinson, and the undisputed evidence, undisputed
18 evidence is those three people voted in the afternoon
19 session. So they weren't deprived in the afternoon to vote.
20 Everyone admits they were given the opportunity to vote
21 subject to challenge or come back, they chose to come back,
22 and they did.

23 So the Employer says, well, maybe there was someone in
24 the hallway or down the hall that these people went and
25 talked to and told them that they weren't allowed to vote at

1 29 after, and is that the theory here, that maybe there's
2 someone they can't identify out there.

3 Well, let's suppose there was. Ms. Robinson, Charetta
4 Robinson said that these three voters came in at 29 after,
5 and a conversation ensued and then they left. So some period
6 less than a minute remained before the polls were going to
7 close. At the most, some very short period of time, that
8 they claim somehow these three potential voters went out and
9 then caused someone else not to vote who could have got into
10 the room before the polls closed, even if the polls closed
11 less than a minute early or at most 1 minute early according
12 to their own witness.

13 That is not a basis for setting aside an election. It's
14 speculation in that fashion. That's not what Wolverine
15 Dispatch stands for. It's not what any of the cases stand
16 for.

17 The Employer here is trying to convince the Board that
18 the precedent that establishes with respect to times of
19 voting that have been shortened improperly should apply in
20 this case, and the fact of the matter is, it should not be.
21 It should not because the polls were not closed early. It
22 should not because no one was deprived of an opportunity to
23 vote or reasonably was deprived the opportunity to vote. It
24 should not because the times in the cases that the Employer
25 cites are nothing like what they are in this case, where

1 they're dispatched 5 minutes during the middle referring to
2 B&B Better Baked Foods, in which the polls opened 40 minutes
3 late. He talked about Pea Ridge Iron, which has about 7
4 minutes in dispute.

5 We would suggest to you that even if there was some
6 conclusion that the polls in this case closed early, that it
7 was at most less than a minute and that the circumstances of
8 this case, based on this record, the Board should not disturb
9 the findings, the outcome. One second, please.

10 HEARING OFFICER SUTCLIFF: Yes.

11 MR. BROOKS: The Employer said that the time clock is
12 the official time and that the employees relied on it, and
13 yet not only -- we don't know what official time means except
14 official time in terms of this election, what is meant by the
15 Board in its Case Handling Manual, and that is the time
16 designated by the elections officer, but there is no reliable
17 evidence in this record that employees considered the time
18 clock to be the official time, whatever that means, that they
19 rely upon the time clock. The testimony is that the
20 employees were never told it was the official time, and the
21 only testimony that anyone set their watch to it or otherwise
22 relied on it is Charetta Robinson in terms of members in the
23 bargaining unit. There is no evidence that any other member
24 of the bargaining unit at all relied upon the time clock in
25 terms of deciding time except for punching in and out. Thank

1 you.

2 MR. MITCHELL: That's the copy that's been drawn on.

3 HEARING OFFICER SUTCLIFF: We do. We need to make
4 copies of the map that has been drawn on.

5 At this point I will let everybody know that I'm going
6 to be issue a report on objections and recommendations, and
7 the parties may file exceptions to my report with the Board
8 within 14 days of the report's issuance. We've already done
9 our closing statements, and if there's nothing further, we'll
10 go ahead and the hearing will be closed.

11 Is there anything further from either party?

12 **(No response.)**

13 HEARING OFFICER SUTCLIFF: Okay. Hearing no reply, the
14 hearing is now closed.

15 **Off the record.**

16 **(Whereupon, at 3:00 p.m., the hearing in the above-entitled**
17 **matter was adjourned.)**

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CERTIFICATION

This is to certify that the attached proceedings before the National Labor Relations Board (NLRB), Region 10, in the matter of **GARDA WORLD SECURITY CORPORATION d/b/a GARDA CL ATLANTIC, INC.**, Case No. 10-RC-15788, at Atlanta, Georgia, on September 28, 2010, were held according to the record, and that this is the original, complete, and true and accurate transcript that has been compared to the reporting or recording, accomplished at the hearing, that the exhibit files have been checked for completeness and no exhibits received in evidence or in the rejected exhibit files are missing.

Letha Wheeler
Official Reporter

Kathryn A. Mirfin
Transcriber

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August 18, 2010

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Re: Garda CL Southeast, Inc.
Case 10-RC-15788

Dear Mr. Brooks:

I am in receipt of your letter dated August 17, 2010, wherein, pursuant to Section 102.118(a)(1) of the Board's Rules and Regulations and GC Memorandum 94-14, you request that the Board Agent who conducted the election on July 21, 2010, in the above-referenced matter, be made available to give testimony at the Objections hearing scheduled to commence this Friday, August 20, 2010.

The Board has a longstanding policy against Agency employees appearing as witnesses in Agency proceedings, absent unusual circumstances. Such unusual circumstances are not present here where other witnesses concerning the issue in question are available and, if need be, said issue can be resolved through credibility resolutions. *Laidlaw Transit, Inc.*, 327 NLRB 315 (1999). Accordingly, your request is denied.

Very truly yours,

Martin M. Arlook
Regional Director

cc: Michael Carrouth, Esq.
Fisher & Phillips LLP
P.O. Box 11612
Columbia, SC 29211



United States Government

NATIONAL LABOR RELATIONS BOARD

Region 10

233 Peachtree Street, NE

Harris Tower, Suite 1000

Atlanta, Georgia 30303-1531

Telephone: (404) 331-2896

Fax: (404) 331-2858

September 23, 2010

Stephen C. Mitchell, Attorney
Fisher & Phillips LLP
P.O. Box 11612
Columbia, SC 29211

Re: GARDA WORLD SECURITY CORPORATION
d/b/a GARDA CL ATLANTIC, INC.
CASE 10-RC-15788

Dear Mr. Mitchell:

I am in receipt of your letter dated September 23, 2010, wherein, pursuant to Section 102.118(a)(1) of the Rules and Regulations and GC Memorandum 94-14, you request that the Board Agent who conducted the election on July 21, 2010, in the above-referenced matter, be made available to give testimony at the Objections hearing rescheduled to commence this Tuesday, September 28, 2010.

The Board has a longstanding policy against Agency employees appearing as witnesses in Agency proceedings, absent unusual circumstances. Such unusual circumstances are not present here where other witnesses concerning the issue in question are available and, if need be, said issue can be resolved through credibility resolutions. *Laidlaw Transit, Inc.*, 327 NLRB 315 (1999).

Very truly yours,

Martin M. Arlook
Regional Director

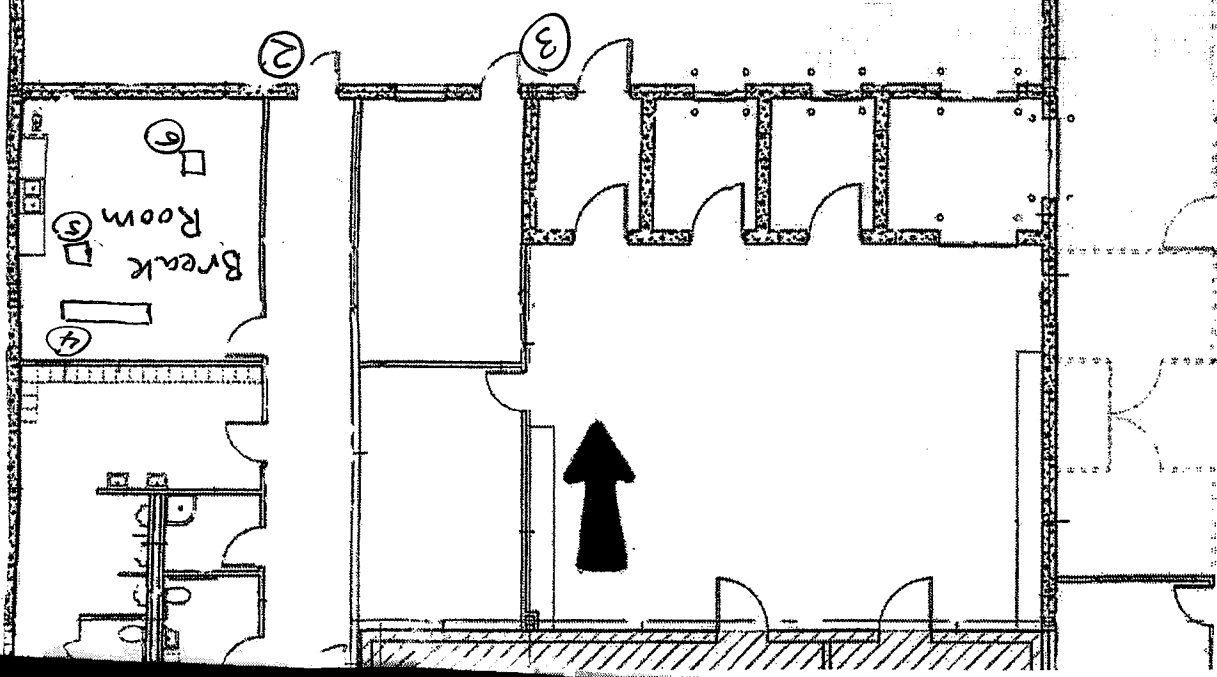
cc: Scott A. Brooks, Attorney
Gregory, Moore, Jeakle, Heinen & Brooks, P.C.
The Cadillac Tower
65 Cadillac Square – Suite 3727
Detroit, MI 48226-2893

72

①

BAY

E-1



Break Room

ATTN All Employees:

Please only work in this zone
and please do not take it
with you
Thank you

All

EMPLOYEES

IMPORTANT

What I want:

"Expectation of Perfection"

08/02/2010 03:51 PM

E-7

McConnell, Earl

From: Navejas, Leo
Sent: Monday, September 27, 2010 3:53 PM
To: McConnell, Earl
Subject: eTime Clock Time

Hello Earl,

I just got off the phone with ADP. They told me that our eTime time clocks get their time from ADP's server which gets it's time from Microsoft Windows. He also said that their server feeds the time to all of our clocks around the country.

I have not received any complaints from any branch that the clock time is off. I also have not heard that Microsoft is having a problem with the time in Windows being off.

If you ever find that the clock displays a different time then your Windows computer please let me know.

Hope this answers your question.

LEO NAVEJAS
Payroll & Tax Manager
Garda Cash Logistics



Discover
the Garda Cash Logistics
Website!



3300 Matrix Dr.
Richardson, TX 75082
T: 972.744.0200 x 115
F: 972.744.0215
Leo.Navejas@gardacashlogistics.com
www.gardacashlogistics.com
www.gardaglobal.com TSX: GW

AFFIDAVIT OF CHARETTA ROBINSON

5. After the meeting, the polls opened for voting and we used the agent's watch to keep an eye on the time. The agent started taking things down two or three minutes before 8:30 a.m. according to the time on her watch. In particular, she began removing things from the table, taking the table down, and packing up a couple minutes before her watch showed it was 8:30 a.m.
6. While she was packing up, three guys came into the voting area. I recognized one of the guys as Patrick Bush, another Garda employee. I do not know the names of the other two guys. The agent told the three guys that they could come back later to vote or vote under challenge or via challenge (I don't remember the exact phrase she used). She did not explain what it meant to vote subject to a challenge. The three guys did not vote during the morning session. I was not an observer during the afternoon session so I do not know if they came back later to vote.

Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury that the foregoing is true and correct. Executed on August 3, 2010.


Charetta Robinson

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10**

GARDA WORLD SECURITY CORPORATION d/b/a
GARDA CL ATLANTIC, INC.

Employer

Case 10-RC-15788

and

INTERNATIONAL UNION, SECURITY, POLICE AND
FIRE PROFESSIONALS OF AMERICA (SPFPA)

Petitioner

INDEX AND DESCRIPTION OF FORMAL DOCUMENTS

BOARD EXHIBIT 1(a)	A copy of the original Report on Objections, Order Directing Hearing and Notice of Hearing filed 08-09-10;
BOARD EXHIBIT 1(b)	A copy of the original Affidavit of Service of 1(a) dated 08-09-10;
BOARD EXHIBIT 1(c)	A copy of the original Order Rescheduling Hearing dated 08-25-10;
BOARD EXHIBIT 1(d)	A copy of the original Affidavit of Service of 1(c) dated 08-25-10;
BOARD EXHIBIT 1(e)	The original Order Rescheduling Hearing dated 09-02-10;
BOARD EXHIBIT 1(f)	The original Affidavit of Service of 1(e) dated 09-02-10;
BOARD EXHIBIT 1(g)	Index and Description of Formal Documents.

BOARD EXHIBITS 1(a) thru 1(g)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10

GARDA WORLD SECURITY CORPORATION d/b/a
GARDA CL ATLANTIC, INC.

Employer

and

INTERNATIONAL UNION, SECURITY, POLICE AND
FIRE PROFESSIONALS OF AMERICA (SPFPA)

Petitioner

CASE 10-RC-15788

DATE OF MAILING: September 2, 2010

AFFIDAVIT OF SERVICE OF: ORDER RESCHEDULING HEARING.

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by postpaid first-class mail upon the following persons, addressed to them at the following addresses:

Served By Regular Mail:

Steve Maritas, Director of Organizing
International Union, Security, Police &
Fire Professionals of America
25510 Kelly Road
Roseville, MI 48066

Scott A. Brooks, Attorney
Gregory, Moore, Jeakle, Heinen & Brooks, PC
The Cadillac Tower
65 Cadillac Square, Suite 3727
Detroit, MI 48226-2893

Robert Yakamo, Human Resources Manager
Garda World Security Corporation
d/b/a Garda CL Atlantic, Inc.
301 N. Lake Avenue, Suite 600
Pasadena, CA 91101

David Argie, Court Reporter
Argie Reporting Services
907 West 77th Street
Kansas City, MO 64114

Michael D. Carrouth, Attorney
Fisher & Phillips LLP
1901 Main Street (29201)
Post Office Box 11612
Columbia, SC 29211

Subscribed and sworn to before me this

2nd day of September, 2010.

DESIGNATED AGENT

NATIONAL LABOR RELATIONS BOARD

BOARD EXHIBIT 1(f)

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10**

GARDA WORLD SECURITY CORPORATION
d/b/a GARDA CL ATLANTIC, INC.

Employer

Case 10-RC-15788

and

INTERNATIONAL UNION, SECURITY, POLICE AND
FIRE PROFESSIONALS OF AMERICA (SPFPA)

Petitioner

ORDER RESCHEDULING HEARING

On August 25, 2010, the Regional Director issued an Order Scheduling Hearing in the above-referenced case for September 23, 2010. On August 31, 2010, Counsel for the petitioner requested postponement of the hearing to a later date. Counsel for the Employer does not oppose the postponement request.

Having duly considered the matter,

IT IS HEREBY ORDERED that the hearing in the above-captioned matter be, and the same hereby is, rescheduled to **September 28, 2010, at 10:00 a.m., (EDT) in the Richard P. Prowell Hearing Room, National Labor Relations Board, Region 10, Regional Office, 233 Peachtree Street, N.E., Harris Tower, Suite 1000, Atlanta, Georgia.**

BOARD EXHIBIT 1(e)

Dated at Atlanta, Georgia, this 2nd day of September, 2010.



A handwritten signature in dark ink, reading "Mary L. Bulls". The signature is fluid and cursive, with the first name "Mary" and last name "Bulls" clearly legible.

Mary L. Bulls, Acting Regional Director
Region 10, National Labor Relations Board
Suite 1000, Harris Tower
233 Peachtree Street, N.E.
Atlanta, Georgia 30303

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10

GARDA WORLD SECURITY CORPORATION d/b/a
GARDA CL ATLANTIC, INC.

Employer

and

INTERNATIONAL UNION, SECURITY, POLICE AND
FIRE PROFESSIONALS OF AMERICA (SPFPA)

Petitioner

CASE 10-RC-15788

DATE OF MAILING: August 25,
2010

AFFIDAVIT OF SERVICE OF: ORDER SCHEDULING HEARING.

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by postpaid first-class mail upon the following persons, addressed to them at the following addresses:

Served By Regular Mail:

Steve Maritas, Director of Organizing
International Union, Security, Police &
Fire Professionals of America
25510 Kelly Road
Roseville, MI 48066

Scott A. Brooks, Attorney
Gregory, Moore, Jeakle, Heinen & Brooks, PC
The Cadillac Tower
65 Cadillac Square, Suite 3727
Detroit, MI 48226-2893

Robert Yakamo, Human Resources Manager
Garda World Security Corporation
d/b/a Garda CL Atlantic, Inc.
301 N. Lake Avenue, Suite 600
Pasadena, CA 91101

David Argie, Court Reporter
Argie Reporting Services
907 West 77th Street
Kansas City, MO 64114

Michael D. Carrouth, Attorney
Fisher & Phillips LLP
1901 Main Street (29201)
Post Office Box 11612
Columbia, SC 29211

Subscribed and sworn to before me this

25th day of August, 2010.

DESIGNATED AGENT

NATIONAL LABOR RELATIONS BOARD



BOARD EXHIBIT

1(d)

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10**

GARDA WORLD SECURITY CORPORATION
d/b/a GARDA CL ATLANTIC, INC.

Employer

and

Case 10-RC-15788

INTERNATIONAL UNION, SECURITY, POLICE AND
FIRE PROFESSIONALS OF AMERICA (SPFPA)

Petitioner

ORDER SCHEDULING HEARING

On August 20, 2010, the hearing on Objections in the above-captioned matter concluded. Thereafter, the court reporter informed the Region that his equipment case, which contained the exhibits and audio tapes of the transcript of the hearing, was stolen from his vehicle. Unfortunately, the hearing will have to be repeated. Accordingly,

IT IS HEREBY ORDERED, pursuant to Section 102.69(d) of the Board's Rules, that the hearing be reheard to resolve the issues raised by the evidence presented by the Employer in support of its Objections.

IT IS FURTHER ORDERED that a Hearing Officer designated for the purpose of conducting the hearing will prepare and cause to be served on the parties a report containing resolutions of the credibility of witnesses, findings of fact and recommendations to the Board as to the disposition of the issues. Within 14 days from the date of the issuance of such report, or within such further period as the Board may allow upon written request to the Board for an extension of time, either party may file

BOARD EXHIBIT 1(c)

with the Board in Washington, D. C., an original and seven (7) copies of exceptions to the Hearing Officer's Report with supporting brief. Immediately upon the filing of such exceptions, the party filing same shall serve a copy thereof, together with a copy of any brief filed, on the other parties and on the Regional Director.

PLEASE TAKE NOTICE that on the **23rd of September, 2010, at 9:00 a.m.**, at the **Richard P. Prowell Hearing Room, National Labor Relations Board, Region 10, Regional Office, 233 Peachtree Street, NE, Harris Tower, Suite 1000, Atlanta, Georgia**, a hearing will be commence before a duly designated Hearing Officer of the National Labor Relations Board on the Objections, and will be conducted on consecutive days thereafter until completed, at which time and place you will have the right to appear, or otherwise, give testimony.

Dated at Atlanta, Georgia this 25th day of August, 2010.



A handwritten signature in cursive script, reading "Martin M. Arlook", is positioned above the typed name and title.

Martin M. Arlook, Regional Director
Region 10, National Labor Relations Board
Suite 1000, Harris Tower
233 Peachtree Street, N.E.
Atlanta, Georgia 30303

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10

GARDA WORLD SECURITY CORPORATION
d/b/a GARDA CL ATLANTIC, INC.

Employer

and

INTERNATIONAL UNION, SECURITY, POLICE
AND FIRE PROFESSIONALS OF AMERICA
(SPFPA)

Petitioner

CASE **10-RC-15788**

DATE OF MAILING: **August 9, 2010**

AFFIDAVIT OF SERVICE OF: REPORT ON OBJECTIONS, ORDER DIRECTING HEARING AND NOTICE OF HEARING.

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by postpaid first-class mail upon the following persons, addressed to them at the following addresses:

Served By Regular Mail:

Steve Maritas, Director of Organizing
International Union, Security, Police &
Fire Professionals of America
25510 Kelly Road
Roseville, MI 48066

Scott A. Brooks, Attorney
Gregory, Moore, Jeakle, Heinen & Brooks, PC
The Cadillac Tower
65 Cadillac Square, Suite 3727
Detroit, MI 48226-2893

Robert Yakamo, Human Resources Manager
Garda World Security Corporation
d/b/a Garda CL Atlantic, Inc.
301 N. Lake Avenue, Suite 600
Pasadena, CA 91101

David Argie, Court Reporter
Argie Reporting Services
907 West 77th Street
Kansas City, MO 64114

Michael D. Carrouth, Attorney
Fisher & Phillips LLP
1901 Main Street (29201)
Post Office Box 11612
Columbia, SC 29211

Subscribed and sworn to before me this

9th day of August, 2010.

DESIGNATED AGENT

NATIONAL LABOR RELATIONS BOARD

BOARD EXHIBIT 1(b)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10

GARDA WORLD SECURITY CORPORATION
d/b/a GARDA CL ATLANTIC, INC.

Employer

and

Case 10-RC-15788

INTERNATIONAL UNION, SECURITY, POLICE
AND FIRE PROFESSIONALS OF AMERICA (SPFPA)

Petitioner

REPORT ON OBJECTIONS
ORDER DIRECTING HEARING
and
NOTICE OF HEARING

Pursuant to a Stipulated Election Agreement approved by the undersigned on June 23, 2010, an election by secret ballot was conducted on July 21, 2010, among the employees in the appropriate unit^{1/} to determine a question concerning representation raised by a petition filed by the Petitioner on June 14, 2010.

Upon conclusion of the balloting, a tally of ballots was made available to the parties showing that of approximately 79 eligible voters, 30 cast valid votes for and 29 cast valid votes against the Petitioner. There were no challenged ballots.

^{1/} The appropriate unit as set forth in the Stipulated Election Agreement is: "All Full-time and regular Part-time Driver/Messenger Guards and Vault-driver/Messenger Guards employed by the Employer at its facility located at 5400 United Drive, Suite A, Smyrna, Georgia 30082; [but excluding] All other non-guard employees, CVS employees, office clerical employees, professional employees, janitorial employees, mechanics, and supervisors as defined in the Act."

BOARD EXHIBIT 1(a)

On July 27, 2010, the Employer timely filed objections to conduct affecting the results of the election, which were served on the Petitioner in accordance with the Rules and Regulations of the National Labor Relations Board.

REPORT ON OBJECTIONS

During the course of the investigation of the Objections, the Employer presented evidence of alleged conduct, summarized below, which it contends warrants setting aside the election. All of the Employer's Objections are associated with its assertion that the Board Agent conducting the election did not properly follow the NLRB Case Handling Manual guidelines.

OBJECTION 1:

In this Objection, the Employer asserts that the polls at the designated polling place closed prior to the actual agreed upon closing time of 8:30am for the first polling session as set forth in the Stipulated Election Agreement and Notice of Election. The Employer asserts that the Board Agent's watch which was used as the official time piece for the first polling session of the election was at least five (5) minutes fast which was brought to her attention during the pre-election conference. The Employer contends that this early closure warrants setting aside the election.

OBJECTION 2:

In this Objection, the Employer asserts that more than one individual who sought an opportunity to vote during the first polling session was denied an opportunity to vote because the Board Agent began closing and packing up the voting area early. The Employer contends that at least three (3) individuals attempted to vote right before the scheduled closing of the polls but were informed by the Board Agent that they could either vote subject to challenge or come back to vote at the second polling session. The Employer maintains that the Board Agent should have permitted these individuals to vote because they were in the polling place and seeking to vote at or before the actual scheduled time for closure of the polls.

OBJECTION 3:

In this Objection, the Employer maintains that by conduct outlined in Objections 1 and 2, the Board Agent did not properly follow the NLRB Case Handling Manual provisions concerning the proper conducting of an election. The Employer asserts that the number of employees possibly disenfranchised by the Board Agent's actions interfered with a free and fair election, and was sufficient to affect the outcome of the election. The Employer underscores that there were 79 employees eligible to vote in the Election conducted on July 21, 2010, where 59 voted and only 30 voted for representation, therefore, the possible disenfranchisement of even one eligible voter was sufficient to have an effect on the outcome of the election.

CONCLUSION

If the Employer can establish that the conduct asserted above interfered with the laboratory conditions of the election conducted on July 21, 2010, such conduct may warrant setting the election aside. However, inasmuch as substantial and material issues of fact and law exist with respect to whether the alleged conduct occurred during the election and whether such conduct warrants setting the election aside, I find that the issues raised by the evidence submitted in support of Employer's Objections can best be resolved following record testimony at a hearing as provided below.

ORDER

IT IS HEREBY ORDERED, pursuant to Section 102.69(d) of the Board's Rules, that a hearing be held to resolve the issues raised by the evidence presented by the Employer in support of its Objections.

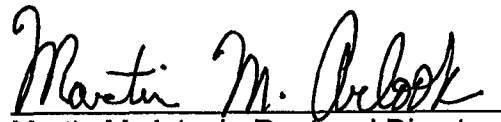
IT IS FURTHER ORDERED that a Hearing Officer [from another Regional Office] designated for the purpose of conducting the hearing will prepare and cause to be served on the parties a report containing resolutions of the credibility of witnesses, findings of fact and recommendations to the Board as to the disposition of the issues. Within 14 days from the date of the issuance of such report, or within such further

period as the Board may allow upon written request to the Board for an extension of time, either party may file with the Board in Washington, D. C., an original and seven (7) copies of exceptions to the Hearing Officer's Report with supporting brief. Immediately upon the filing of such exceptions, the party filing same shall serve a copy thereof, together with a copy of any brief filed, on the other parties and on the Regional Director.

PLEASE TAKE NOTICE that on the **20th of August, 2010, at 10:00 a.m.**, at the **Richard P. Prowell Hearing Room, National Labor Relations Board, Region 10, Regional Office, 233 Peachtree Street, NE, Harris Tower, Suite 1000, Atlanta, Georgia**, a hearing will be commence before a duly designated Hearing Officer of the National Labor Relations Board on the Objections, and will be conducted on consecutive days thereafter until completed, at which time and place you will have the right to appear, or otherwise, give testimony.

Dated at Atlanta, Georgia this 9th day of August, 2010.




Martin M. Arlook, Regional Director
National Labor Relations Board
233 Peachtree Street, NE
Harris Tower, Suite 1000
Atlanta, GA 30303-1531

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10**

Garda World Security Corporation)	Case No.: 10-RC-15785
d/b/a Garda CL Atlantio, Inc.)	
)	
Employer)	
)	
and)	
)	
International Union, Security, Police and)	
Fire Professionals of America (SPFPA))	
)	
Petitioner)	
)	

EMPLOYER'S OBJECTIONS TO THE CONDUCT OF THE ELECTION

Garda World Security Corporation d/b/a Garda CL Atlantic, Inc., the employer in the above-captioned case (hereinafter "Employer"), timely files, pursuant to NLRB Rules and Regulations Section 102.69(a), these Objections to the Conduct of the Election conducted on July 21, 2010, at the Employer's facility in Smyrna, Georgia, in connection with the above-captioned case.

PRELIMINARY STATEMENT

On June 23, 2010, the Employer and the International Union, Security, Police and Fire Professionals of America (hereinafter "SPFPA" or "Union") entered into a Stipulated Election Agreement, which was approved by the Regional Director. The Stipulated Election Agreement provided that a secret ballot election was to be conducted by the Region between 5:30 a.m. to 8:30 a.m. and 4:00 p.m. to 8:00 p.m. on Wednesday, July 21, 2010, in the Employer's break room.

At the conclusion of the pre-vote conference, the agent from the Region reported the time according to her watch. In response, three representatives for the Employer indicated that the

Board Agent's watch was at least 5 minutes too fast. Instead of making any attempt to confirm an accurate time or check with time clock located immediately outside of the voting area, the Board agent stated her watch was the "official time" and did not allow any further discussion of the issue. Thereafter, at approximately 8:32 a.m. on July 21, 2010, at the onset of the first post-vote closing conference, the Employer representatives observed that the polling area was already packed up and had closed early. Specifically, all of the NLRB's official notices confirming a representation election was in progress had already been removed from the working area adjacent to the time clock.

Additionally, during the post-vote conference, the Board agent reported she had not permitted individuals, who presented themselves as eligible voters, to vote during the first voting session because they entered the voting area after she "closed the polls." During the post-vote conference, the Board Agent confirmed she had closed the polls based on her watch, which had remained at least 5 minutes fast. At the start of the second voting period, the Board agent properly used the time clock adjacent to the voting area to confirm the correct starting and stopping time. The vote count at the close of the second and final polling period had 30 employees voting to be represented by the Petitioner and 29 voting against representation. There were no objections nor challenges. While only 59 employees voted, there were 79 eligible voters.

OBJECTION 1

The polls at the polling place closed prior to the agreed upon and officially published closing time of 8:30 a.m. on July 21, 2010. The Board Agent's early closure of the polls breached the Stipulated Election Agreement and the official Notice of Election. As a result, the number of employees possibly disenfranchised by the early closure is sufficient to affect the election outcome and the conduct of the Board Agent interfered with a free and fair election.

OBJECTION 2

More than one individual, who sought an opportunity to vote in the July 21, 2010, election, was denied an opportunity to vote by the Board Agent despite being in the polling place and seeking to vote at or before the scheduled time for closure of the polls. The Board Agent's decision to deny individuals the opportunity to vote violates the Board's rules and procedures. The number of employees possibly disenfranchised by the Board Agent's actions interfered with a free and fair election and is sufficient to affect the election outcome.

OBJECTION 3

Because there were 20 eligible voters who could have, but did not vote in the election in question on July 21, 2010, the Board Agent's refusal to confirm and use an accurate time for the first voting session possibly disenfranchised a sufficient number of eligible voters to affect the results of the election and interfered with a free and fair election.

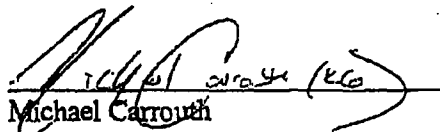
By the above conduct and other acts, the conditions necessary for a valid National Labor Relations Board election were destroyed and, therefore, the election was invalid.

WHEREFORE, in light of the objectionable conduct described above, Employer requests that the election be set aside and a new election held at the earliest possible date.

Respectfully submitted,

FISHER & PHILLIPS LLP

By:


Michael Carrouth
Attorney for Respondent

Fisher & Phillips LLP
Post Office Box 11612
Columbia, South Carolina 29211
(803) 255-0000 (phone)
(803) 255-0202 (fax)
mcarrouth@laborlawyers.com

Dated this 27th day of July 2010.